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SPECIAL COMMITTEE, BILL No. 2 *re* COPYRIGHT ACT

PROCEEDINGS of the Special Committee appointed to consider and report upon Bill No. 2, an Act to amend and make operative certain provisions of the Copyright Act, 1921,

COMPRISING

The Order of Reference, Reports of the Committee presented to the House, and the Evidence taken before the Committee.

FEBRUARY—JUNE SESSION, 1925

Fourth Session of the Fourteenth Parliament of Canada

PRINTED BY ORDER OF PARLIAMENT



OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1925

TABLE OF CONTENTS

	PAGE
Order of Reference.....	iii
Members of the Committee.....	iv
Reports of the Committee.....	v
Minutes of the Proceedings.....	vii
List of Names of Persons who gave Evidence before the Committee.....	xxi
Minutes of the Evidence.....	1-242
Communications.....	243-273
Index to Witnesses' evidence.....	275
Index, General.....	279

BILL No. 2 re COPYRIGHT ACT, 1921

ORDER OF REFERENCE

HOUSE OF COMMONS,

THURSDAY, February 19, 1925.

Resolved, That Bill No. 2, An Act to amend and make operative certain provisions of The Copyright Act, 1921, be referred to a Special Committee with power to send for persons, papers and records and to report from time to time.

Attest.

ARTHUR BEAUCHESNE,

Clerk of the House.

WEDNESDAY, February 25, 1925.

Ordered, That the following Members do compose the said Committee, viz.: Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, McKay, Prévost, Raymond and Rinfret.

Attest.

ARTHUR BEAUCHESNE,

Clerk of the House.

TUESDAY, March 10, 1925.

Ordered, That the said Committee be granted leave to print its proceedings and evidence, when deemed advisable, for the use of the Committee and for the use of the members of this House; and that Rule 74 in relation thereto be suspended.

Attest.

ARTHUR BEAUCHESNE,

Clerk of the House.

MONDAY, April 27, 1925.

Ordered, That the said Committee have leave to sit while the House is in session.

Attest.

ARTHUR BEAUCHESNE,

Clerk of the House.

MEMBERS OF THE COMMITTEE

Mr. W. G. RAYMOND, *Chairman.*

Mr. E. R. E. CHEVRIER.

Mr. L. J. LADNER.

Mr. A. F. HEALY.

Mr. A. J. LEWIS.

Mr. H. C. HOCKEN.

Mr. M. MCKAY.

Mr. R. A. HOEY.

Mr. J. E. PRÉVOST.

Mr. W. IRVINE.

Mr. F. RINFRET.

V. CLOUTIER, *Secretary.*

REPORTS OF COMMITTEE TO THE HOUSE

FIRST REPORT

HOUSE OF COMMONS OF CANADA,

TUESDAY, March 10, 1925.

The Special Committee appointed to consider and report upon Bill No. 2, An Act to amend and make operative certain provisions of the Copyright Act, 1921, has the honour to present the following as its First Report:

Your Committee, in accordance with a resolution which it has adopted, recommends that it be granted leave to print its proceedings and evidence, when deemed advisable, for the use of the Committee and for the use of the members of this House; and that Rule 74 in relation thereto be suspended.

All which is respectfully submitted.

W. G. RAYMOND,
Chairman.

SECOND REPORT

THURSDAY, April 23, 1925.

The Special Committee appointed to consider and report upon Bill 2, An Act to amend and make operative certain provisions of the Copyright Act, 1921, has the honour to present the following as its Second Report:

Your Committee recommends that it be given leave to sit while the House is in session.

All which is respectfully submitted.

W. G. RAYMOND,
Chairman.

THIRD REPORT

FRIDAY, May 29, 1925.

The Special Committee, appointed to consider and report upon Bill No. 2, An Act to amend and make operative certain provisions of The Copyright Act, 1921, has the honour to present the following as its Third Report:

Your Committee, having given Bill No. 2 very careful consideration, has agreed to report the same with several amendments. A re-printed copy of the said Bill with its amendments indicated by an underlining of same, and with explanatory notes specially indicating the several sections and subsections of the Act, which have been amended or added thereto, is also herewith submitted.

Your Committee has held seventeen meetings in the course of which twenty-seven witnesses, representing various interests which it was thought might be affected by the proposed amendments, were examined for evidence. Many communications containing suggestions, also resolutions adopted by various societies, clubs or associations, were received and given consideration.

Your Committee has also agreed to recommend that its proceedings and evidence, a corrected copy of which is herewith submitted for the information of the House, be indexed and printed as an appendix to the Journals of the present session of parliament; also, for distribution in blue-book form to the extent of one thousand copies.

All which is respectfully submitted.

W. G. RAYMOND,
Chairman.

Note.—For Recommendation concurred in, *see* Journals at page 377. *See* also Unrevised Debates (Hansard) at pages 3889-3890.

MINUTES OF PROCEEDINGS

SPECIAL COMMITTEE APPOINTED BY THE HOUSE OF COMMONS, CANADA TO CONSIDER
AND REPORT UPON BILL 2, AN ACT TO AMEND AND MAKE OPERATIVE
CERTAIN PROVISIONS OF THE COPYRIGHT ACT, 1921

COMMITTEE ROOM 436,

TUESDAY, March 3, 1925.

1. The Committee pursuant to notice assembled at 10.30 o'clock a.m.

2. Members present: Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, McKay, Raymond, and Rinfret—10.

In attendance: Mr. George F. O'Halloran, Commissioner of Patents and Copyrights, and Mr. E. Blake Robertson, of the Canadian Manufacturers' Association.

3. On motion of Mr. McKay, Mr. Raymond was chosen Chairman.

4. The Committee at once proceeded to consider the Bill. A discussion of the merits of the Bill, in which all the members took part, followed. References were also made to the British Copyright Act of 1911, the Berne Convention, and the Canadian Copyright Act of 1921.

5. Mr. Healy moved, seconded by Mr. Hoey that, the Bill be considered clause by clause.—Motion carried.

6. Ordered, that the Clerk of the Committee obtain copies of the Act of 1921 for the use of the Committee.

7. Clause 1 adopted.

Clause 2, Interpretation clause.—Subsection (1) adopted. Subsections (2) and (3) amended, and adopted as amended. Subsection (4) considered in part and deferred until next meeting for further consideration.

8. On motion of Mr. Chevrier, seconded by Mr. Rinfret,—it was resolved that the following persons be heard on Tuesday, March 10:—

Mr. J. Murray Gibbon, ex-President, Canadian Authors' Association, Montreal.

Mr. Lawrence J. Burpee, National President Canadian Authors' Association, Ottawa.

Mr. L. de Montigny, Canadian Authors' Association, Ottawa.

Dr. Stephen Leacock, McGill University, Montreal.

Dr. O. D. Skelton, Ottawa.

On motion of Mr. Healy, seconded by Mr. Chevrier,—it was resolved that the following persons be also heard on Tuesday, March 10:—

Mr. W. F. Harrison, Manager, Canadian National Newspaper and Periodical Ass'n., 70 Lombard St., Toronto.

Mr. F. F. Appleton, Chairman of Book Publishers Section, Board of Trade, Toronto.

Mr. J. A. P. Haydon, President of Ontario and Quebec Conference, Typographical Union, 93 Sparks St., Ottawa.

On Friday, March 13,—

Mr. R. H. Combs, Canadian National Carbon Company, Toronto.

Mr. Edgar M. Berliner, The Victor Talking Machine Company, Ltd., Montreal.

9. The Committee, on motion of Mr. Rinfret, then adjourned until Tuesday, March 10, at 10.30 a.m.

V. CLOUTIER,

Clerk of the Committee

TUESDAY, March 10, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

2. Other Members present:—Messrs. Chevrier, Hocken, Hoey, Irvine, Lewis and McKay.

In attendance:—Mr. Geo. F. O'Halloran, Commissioner of Patents and Copyrights.

3. The Committee proceeded to consider section 5 of the Bill *re* the repeal of sections 13, 14, and 15 of the Copyright Act, 1921, when Mr. Irvine moved that the Authors be heard first. Mr. Chevrier on moving that Sections 13, 14, and 15 be repealed suggested that those persons present who were opposed to the repeal of the said sections should be heard. He therefore moved that Mr. Harrison be heard now. Mr. Irvine's motion carried.

4. The persons whose names hereunder follow were called, duly sworn and examined for evidence:—

Mr. Lawrence J. Burpee, Ottawa.

Mr. J. Murray Gibbon, Montreal.

Mr. F. F. Appleton, Toronto.

Mr. Stephen B. Leacock, Montreal.

Mr. W. F. Harrison, Toronto.

Mr. J. Vernon McKenzie, Toronto.

In the course of the examination of the witnesses, Mr. O'Halloran was asked to define certain terms in the Act.

(See stenographic report of the evidence).

5. Witnesses retired.

6. Mr. Lewis moved, Mr. Chevrier seconding, that leave be obtained from the House to print the proceedings and evidence of the Committee, and that a report be prepared accordingly. Mr. Chevrier suggested that 500 copies be printed. After due consideration, it was agreed that 300 copies be printed for the use of the Committee and for the use of the Members of the House. Motion carried.

7. The Committee on motion of Mr. McKay then adjourned until tomorrow at 10 o'clock a.m.

V. CLOUTIER,

Clerk of the Committee.

WEDNESDAY, March 11, 1925.

1. The Committee met at 10 a.m., the Chairman, Mr. Raymond, presiding.

2. Other Members present:—Messrs. Chevrier, Irvine, Ladner, Lewis, McKay, Prévost, and Rinfret.

In attendance:—Mr. George F. O'Halloran, Commissioner of Patents and Copyrights.

3. The Committee proceeded to consider section 5 of the Bill, when it was resolved to hear further evidence in relation thereto, and the persons whose names hereunder follow were called, duly sworn and examined for evidence.

Mr. Edward Beck, Canadian Pulp and Paper Association, Montreal.

Mr. Dan A. Rose, Canadian Copyright Association, Toronto.

Mr. Wallace A. Sutherland, Typothetae Association, Toronto.

Mr. J. A. P. Haydon, President of the Ontario and Quebec Conference, Typographical Union, Ottawa.

Mr. George M. Kelley, Counsellor, Publishers' Section, Board of Trade, Toronto.

Mr. Alfred E. Thompson, Canadian Representative, International Typographical Union, Toronto.

Mr. Louvigny de Montigny, Canadian Authors' Association, Ottawa.

In the course of his evidence, Mr. Kelley suggested that subsection (3) of section 27 be amended in respect to books which were not purchasable in Canada.

In the course of his evidence, Mr. Haydon suggested that subsection (3) (d) of section 27 and section 13 of the Act be amended. (See stenographic report of the evidence).

4. Witnesses retired.

5. The Committee on motion of Mr. Chevrier, then adjourned until Friday, March 13, at 10.30 a.m.

V. CLOUTIER,
Clerk of the Committee.

FRIDAY, March 13, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Hoey, Irvine, Ladner, Lewis, McKay, Prévost, and Rinfret.

In attendance:—Mr. Geo. F. O'Halloran.

2. The minutes of proceedings of the meetings held the 10th and 11th March were read and adopted.

3. Communication,—From the Associated Radio of Manitoba, Mr. J. H. Curle, secretary, protesting against royalties for broadcasting copyright music. *Printed.*

4. Motion,—Mr. Chevrier, seconded by Mr. McKay,—That 400 copies of the proceedings and evidence instead of 300 which is found to have been insufficient, be printed. Motion carried.

5. The Committee then proceeded to the further consideration of Bill No. 2, *re* The Copyright Act, under subsection (4) (q) of section 2, also under section 5 thereof, when the following persons were called, duly sworn and examined for evidence:

Mr. Edgar M. Berliner, representing the Victor Talking Machine Company, of Canada, Ltd., Montreal.

Mr. R. H. Combs of the Canadian Radio Trades Association, Toronto.

Mr. Norman Guthrie, Counsel, representing the Canadian National Railways, Ottawa, and

Mr. James E. Hahn, representing The de Forest Radio Corporation, Toronto.

In the course of the evidence given, several amendments to the Copyright Act were submitted, all of which appear in the evidence part of the printed proceedings.

Certain statements made by Mr. E. Blake Robertson, and Mr. O'Halloran are also recorded in the evidence part of the printed proceedings.

6. The Committee then adjourned until Tuesday, March 17th, at 10.30 a.m.

V. CLOUTIER,
Secretary.

TUESDAY, March 17, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Hocken, Hoey, Irvine, Ladner, Lewis, McKay, and Rinfret.

In attendance:—Mr. George F. O'Halloran.

2. The minutes of proceedings of the last meeting were read and confirmed.

3. Communications:—From Mr. F. F. Appleton expressing his desire of qualifying the statements made in his evidence before the Committee and also states that he withdraws any statements opposed to the views he now expresses in said communications; also, communications from Mr. W. F. Maclean, M.P., and various other persons, all of which are noted at pages 103-107 in the evidence part of the proceedings.

4. Motions:—By Mr. McKay, that Mr. Appleton be advised to reappear before the Committee. Motion carried.

By Mr. Ladner, that the communications received, which are being reported by the Clerk for the consideration of the Committee, be printed when deemed advisable as an appendix to the evidence. Motion carried.

5. The Committee again proceeded to consider Subsection (4) (q) of section 2 of the Bill, also section 5 thereof, when the following persons were called, sworn and examined for evidence:

Mr. E. Blake Robertson, representing makers of Phonograph Records, etc., Ottawa,

Mr. J. N. Cartier, representing La Presse Broadcasting and certain other Stations in Canada, Montreal, and

Mr. Henry T. Jamieson, representing the Performing Right Society, Ltd., London, England, Toronto.

Mr. O'Halloran also stated in the course of the evidence given, the views held by those who had drafted the Act of 1921.

The Committee then adjourned at 1.10 p.m. until Friday, March 20th, at 10.30 a.m.

V. CLOUTIER,
Clerk of the Committee.

FRIDAY, March 20th, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Lewis, McKay and Rinfret.

In attendance:—Mr. O'Halloran, Commissioner of Patents and Copyrights.

2. The minutes of proceedings of the last meeting were read and approved.

3. Communication, from Mr. F. F. Appleton, Toronto, telegram dated 18th March, in reply to the Clerk's telegram of same date. (See page 141 of the printed proceedings).

4. Motion, by Mr. Lewis,—that the Committee do not ask Mr. Appleton to re-appear for further examination. Motion carried.

5. The Committee again proceeded to further consider section 2 of the Bill under subsection (4) (q) and section 5 thereof, when His Honour Judge A. Constantineau was called, sworn, and examined; also Mr. L. de Montigny

who was re-called and further examined. In the course of his evidence, Mr. de Montigny suggested an amendment to section 27 of the Act of 1921 on a certain condition. (See page 154 of the printed proceedings).

Mr. Irvine, during Mr. de Montigny's examination, read a letter he had received from Russell, Lang & Company, Limited of Winnipeg, relating to books by British authors which were imported from United States into Canada. (See page 166 of the printed proceedings).

6. The witnesses retired.

7. The Committee then adjourned at 1 p.m. until Tuesday, 24th March, at 11 a.m.

V. CLOUTIER,

Clerk of the Committee.

WEDNESDAY, March 25, 1925.

1. The Committee met at 11 a.m., the Chairman, Mr. Raymond, presiding. Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, and McKay.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. Communications:—From Mr. H. Macdonald, Legal Secretary, Canadian Manufacturers' Association; also from Right Honourable, Viscount de Fronsac, both of which are extended in the printed proceedings; also from Mr. John Waters and others, all of which are noted in the printed proceedings.

Mr. Chevrier presented two letters addressed to the Prime Minister; also a cablegram addressed to himself from the Music Publishers Association of Great Britain, all of which are extended in the record.

Mr. Ladner presented a letter which he received from the Musical Development Association,—Ordered filed.

4. The Committee again proceeded to further consider section 2 under subsection (4) (g) and section 5 of the Bill when Mr. Gordon V. Thompson and Mrs. Madge Macbeth were called, sworn and examined for evidence; also Mr. F. F. Appleton who was recalled for further examination.

5. The witnesses retired.

6. The Committee on motion of Mr. Ladner then adjourned until Thursday at 10.30 a.m.

V. CLOUTIER,

Clerk of the Committee.

THURSDAY, March 26, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, McKay, and Rinfret.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. Communications.—From the Canadian Booksellers' and Stationers' Association, Toronto, requesting that they be given an opportunity of appearing before the Committee, Mr. F. I. Weaver, Secretary. Also from The American Society of Composers, Authors and Publishers, Mr. E. C. Mills, President.—Presented by Mr. Chevrier.

4. *Motion*.—Mr. Ladner moved, Mr. Chevrier seconding.—That Representatives of The American Society of Composers, Authors and Publishers be requested to appear and give evidence before the Committee on Monday, March 30. Motion carried.

5. The Committee proceeded to hear further evidence from Mr. E. Blake Robertson relating to Radio interests and Broadcasting. (See pages 209-214 of the printed proceedings.)

6. Witness retired.

7. The Committee upon resuming consideration of the Bill under Sections 3, 4, and 6, made further progress.

8. *Motion*.—By Mr. Ladner, Mr. Irvine seconding,—That Mr. O'Halloran's statement relating to the proposed amendment affecting broadcasting be heard but that same do not form part of the printed evidence; also, that Mr. O'Halloran furnish the Committee with a memorandum covering some of the essential features of the Copyright law. Motion carried.

9. The Committee then adjourned until Monday, March 30, at 10.30 a.m.

V. CLOUTIER,

Clerk of the Committee.

MONDAY, March 30, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Irvine, Ladner, Lewis, and McKay.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. *Communications received*.—From Branches of The Canadian Authors' Association, relating to Licensing clauses in the Act; also, from the Northern Electric Company and others, relating to Radio interests; also, from The Leo Feist Limited, suggesting an amendment to Section 18 of the Act; also from Whaley, Royce & Company, relating to certain evidence given before the Committee; also, from Mr. Henry T. Jamieson, Chairman in Canada of The Performing Right Society, London, England, relating to "Broadcasting" and Authors' rights; also, from The Music Publishers' Association, London, England, Mr. C. J. Dixey, Secretary, approving Bill No. 2,—presented by Mr. Chevrier. (See also Addenda in No. 8 printed proceedings.)

4. The Committee again proceeded to further consider Section 5 of the Bill and certain other proposed amendments when The Honourable Edouard Fabre Surveyer, Judge of the Superior Court in the Province of Quebec, and President of the Montreal Section of The Canadian Authors' Association, Mr. Nathan Burkan, Counsel, and Mr. Julius C. Rosenthal, General Manager of The American Society of Composers, Authors and Publishers, New York, U.S.A., were called, sworn and examined for evidence.

5. The witnesses retired.

6. Mr. O'Halloran, Commissioner of Patents, presented the memorandum, which he had been requested to prepare, relating to the proposed amendment of sub-clause (4) of clause 2 of the Bill. On motion of Mr. Ladner, the said memorandum was ordered printed. (See Addenda in No. 8 Proceedings.)

7. The Committee, on motion of Mr. Hocken, seconded by Mr. McKay, then adjourned until Thursday, 16th of April, at 10.30 a.m.

V. CLOUTIER,

Clerk of the Committee.

TUESDAY, April 21, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Lewis, and Prévost.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. The clerk reported upon communications as follows:—

(1) From Mr. Nathan Burkan, Counsellor, New York, dated 17th of April, in reference to the contents of Mr. E. Blake Robertson's letter of 11th of April relating to Mr. Burkan's and Mr. Rosenthal's evidence given before the Committee on March 30th.

(2) From Mr. E. Blake Robertson's letter dated April 16th, relating to President Coolidge's proclamation of December 27th, 1923, in respect to copyright extension to Canada, etc.

(3) Mr. Chevrier, in presenting a file comprising 28 communications, suggested that the remaining communications which the clerk was reporting upon, along with his own which he was now laying on the Table, to save time, might be left in the custody of the clerk for reference by members of the Committee. This suggestion was approved.

4. The Committee then proceeded to the further consideration of clause 7 of the Bill, and made progress. It was agreed upon Mr. Chevrier's suggestion that the said clause be revised during the adjournment period of the Committee, and endeavour to effect a satisfactory solution of the differences which have arisen regarding some of its provisions.

5. Mr. Lewis moved, Mr. Hoey seconded,—That the Committee obtain leave from the House to sit while the House is in session. Motion agreed to.

6. Mr. Hoey then moved that the Committee adjourn until Wednesday, 29th April, at 10.30 a.m.,—Motion agreed to.

V. CLOUTIER,

Clerk of the Committee.

WEDNESDAY, April 29, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, and McKay.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. The Committee proceeded to further consider Bill No. 2, under clauses 6, 7 and 8 and made progress.

4. The Committee, on motion of Mr. Lewis, then adjourned until to-morrow, Thursday, at 10.30 a.m.

V. CLOUTIER,

Clerk of the Committee.

THURSDAY, April 30th, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, Prévost, and Rinfret.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. Mr. Chevrier moved, seconded by Mr. Rinfret, that the Decisions given in United States Courts, which have been received, relating to copyrighted musical compositions, and referred to in the evidence given by witnesses Nathan Burkan and J. C. Rosenthal before this Committee on March 30th, be printed in the proceedings: also, that the Decision given in the Civil Division of Hamburg in Germany, relating to the protection given a copyright owner of music, which has but recently been received from Mr. Rosenthal, be likewise printed in the proceedings. Motion agreed to.

4. The Committee then proceeded to further consider Bill No. 2, under clauses 8 to 13 and made progress.

5. The Committee, on motion of Mr. Rinfret, then adjourned to meet at the call of the Chair.

V. CLOUTIER,
Clerk of the Committee.

WEDNESDAY, May 6, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messieurs Chevrier, Healy, Hocken, Irvine, Ladner, McKay, Prévost, and Rinfret.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. The Committee at once proceeded to the further consideration of the Bill, as follows:—

Mr. Chevrier moved, seconded by Mr. Rinfret,—that section two of the Act be amended by adding thereto the following paragraph:

“(u) The expressions “pirated work” and pirated copies” respectively mean any musical work or any copies thereof written, printed or otherwise reproduced without the consent lawfully given by the owner of the copyright in such musical work.”

That clause 11 of the Bill be amended by adding thereto as subsections three, four, five, six, seven and eight of section twenty-four of the Act, the following: (*see re-printed Bill No. 2, at page 8, clause 16.*)

Motion agreed to.

4. Proceeding to clause 10 of the Bill, provisions dealing with minimum damages—*re* 23C which the Committee deleted—It was moved by Mr. Ladner, seconded by Mr. Chevrier, and the Committee agreed to the following:—

Immediately after section 19 (1) of the Copyright Act, 1921, add the following words:

“In computing damages, the plaintiff shall be entitled to have included therein all the profits which the infringer shall have made from such infringement.”

And add, immediately after paragraph (b) of section 19 (3) of the said Act, the following as new subsections (4) and (5) of the said section:

"(4) Where the infringer is a firm society, partnership, company, association, group or club, the president and several officers or managers of same shall be personally liable to such damages or fines as the court may determine, notwithstanding the grant or assignment of their liability in the matter after the date of the infringement."

"(5) If the infringement is fraudulent, the court may, without prejudice to any other remedy, award the owner of the copyright punitive damages."

5. Proceeding to clause 13 of the Bill at 25D, the following, on motion of Mr. Chevrier, was considered and agreed to:—

"25D. Wherever there is reasonable ground to suspect that a work is about to be or is being or has been infringed, and the suspected infringer, on demand in writing to do so, has failed to forthwith produce the text or copy of the work from which a reproduction, execution or performance is about to be or is being or has been made contrary to the provisions of this Act, a summons shall, on request therefor, be issued by a police magistrate ordering the suspected infringer to appear before such magistrate and to produce such text or copy."

(See 25c in reprinted Bill at page 10.)

6. Proceeding to clause 13 of the Bill, at 25E, the following, on motion of Mr. Chevrier, seconded by Mr. Irvine, was considered and agreed to:—

"25E. Any person, corporation or association charged under this Act with having reproduced, performed or executed a work contrary to the provisions of this Act, shall not be allowed to set up as a means of defence that the work was so reproduced, performed or executed from copies of such work bearing an altered title or from copies failing to disclose the name of the author of the original work; and any assignment of a work shall not entitle the assignee to suppress or change the name of the author of the said work nor in any way whatsoever change the nature of the work, nor in any other way affect the moral right of the author therein."

(See 25D (1) in re-printed Bill at page 10.)

7. Adverting to section two of the Act, 1921, Mr. Irvine moved, and it was agreed, that the following definition be referred to the proper authorities of the Government for opinion, and to be added as a paragraph to the said section:—

"2 () Canadian citizen means any person born in Canada or naturalized in Canada who has not subsequently become naturalized in a foreign country, and any British subject, by birth or naturalization, who is domiciled in Canada."

8. A communication dated May 5th, 1925, from the Honourable Mr. Burrell, Librarian of Parliament was read and received regarding the number of copies of a copyrighted work which should be deposited in the Library of Parliament. The said communication was considered and ordered filed for further consideration.

(See clause 21 in re-printed Bill at page 12.)

9. Clause 14 of the Bill was considered and adopted. (See clause 19 in re-printed Bill at page 11.)

10. Clause 15 of the Bill was considered, and deferred for further consideration. (See clause 20 in re-printed Bill at 11.)

11. Clause 16 of the Bill was considered, and withdrawn.

12. Mr. Ladner gave notice that he would move, at the next meeting of the Committee, that sections thirteen and fourteen as amended by section two of chapter ten of the Statutes of 1923 be repealed. Mr. Ladner handed a copy of the proposed new section to the Chairman.

13. The Committee then adjourned until Thursday at 8 o'clock p.m.

V. CLOUTIER,

Clerk of the Committee.

THURSDAY, May 7, 1925.

1. The Committee met at 8 p.m., the Chairman, Mr. Raymond, presiding. Other Members present:—Messieurs Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, Prévost, and Rinfret.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. The Committee proceeded to further consider Bill No. 2, under various clauses, also certain sections of the Copyright Act to which some of the clauses under consideration related, as follows:

Clause 2 of the Bill, section two of the Act, 1921, considered. Add "2()" defining "Canadian citizen" for the purposes of the Act, as per resolution of Mr. Irvine, adopted at last meeting. An opinion received from the Department of Justice was read and considered. After consideration thereof, Mr. Irvine moved, seconded by Mr. Hocken,—that the definition be drafted in accordance with the opinion given by the Department.—Motion carried on a division.

Clause 17 of the Bill, section thirty-nine of the Act, 1921, considered: Mr. Lewis moved, Mr. Chevrier seconded, and it was agreed,—that the following words be added after the word "claims," line 13 at page 12 of the Bill:

"And no grantee shall maintain any action under this Act unless and until his grant has been registered."

Clause 17 (1) adopted as amended. (See clause 21 in re-printed Bill, page 12.)

Sub-clause (2) of clause 17 considered: Mr. Chevrier moved that the words commencing with "or" in line 18, page 12, to the end of the paragraph be struck out.

Motion carried on a division, and said sub-clause (2) of clause 17 adopted as amended.

Sub-clauses (1) and (2) of clause 18 considered: Said sub-clauses, on motion of Mr. Chevrier were ordered withdrawn.

Sub-clause (3) of clause 18 considered: Said sub-clause, on motion of Mr. Chevrier, was adopted.

Clause 19 considered: Said clause, on motion of Mr. Chevrier, was ordered withdrawn.

4. The Chairman informed the Committee that Mr. Lawrence J. Burpee who was present desired to be heard. The Committee agreed. Mr. Burpee submitted that although the aim of the Copyright Act is to protect the author, yet there was a doubt as to the title of an author's work being protected under its provisions. He urged that the Committee give this matter further consideration.

Mr. Irvine moved that Mr. Burpee's suggestion be committed to Mr. Chevrier and Mr. Fraser for further consideration and report.

Motion carried.

5. The Committee then proceeded to further consider clause 15 of the Bill, section twenty-seven (1) of the Act: Mr. Chevrier moved that the proposed enactment thereto relating which was suggested by Mr. Kelley as set out at page 56 of the printed proceedings, be adopted.

Said motion was rejected on a division.

6. Sub-clause (1) of clause 2 of the Bill again considered: Mr. Chevrier moved that after the word "by" in line 10, at page 1 the words "handwriting, typewriting" be added.

Motion carried.

7. Section two of the Act, 1921, at paragraph (c), interpretation of "book" considered: Mr. Chevrier moved that a clause be inserted in the Bill to repeal said paragraph. Ordered for further consideration.

8. Clause 3 of the Bill was re-considered: Mr. Rinfret moved, that owing to the withdrawal of sub-clauses (1) and (2) of clause 18 of the Bill, said clause 3 be struck out. Unanimous consent having been obtained, said clause was further considered, and ordered struck out.

9. Clause 13 at "25E as adopted at a previous meeting was again considered: Mr. Chevrier moved that the following be added after "25E(1):

"(2) For the purpose of this section "moral right" means the author's personal privilege of enjoying the prestige or influence which he may derive or which may accrue to him from his production, notwithstanding any assignment of his property rights."

(See clause 18 in re-printed Bill, at pages 10-11).

Motion carried on a division.

10. Sub-clause (4) of clause 2 of the Bill considered: Mr. Chevrier moved that said sub-clause be struck out and the following be substituted therefor:

"(4) Paragraph (q) of section two of the said Act is repealed and the following is substituted therefor:

"(q). "performance means any acoustic execution of a work or any visual representation of any dramatic action in a work, including such execution or representation made by means of any mechanical instrument and any communication, diffusion, reproduction, execution, representation or radio-broadcasting of any such work by wireless telephony, telegraphy, radio or kindred process. PROVIDED that any communication, diffusion, reproduction, execution, representation or radio-broadcasting by any such wireless, radio or other kindred process, when made for private or amateur purpose and for no profit, shall not constitute a performance under this paragraph."

After discussion, the motion was put and declared lost on a division.

Mr. Chevrier then moved, seconded by Mr. Lewis,—that the said proposed sub-clause without the proviso be adopted.

Motion was declared lost on a division.

Mr. Healy then moved that sub-clause (4) of clause 2 of the Bill be adopted. Motion carried.

11. The Committee then adjourned to meet again at the call of the Chair.

V. CLOUTIER,

Clerk of the Committee.

WEDNESDAY, May 13, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding. Other Members present:—Messieurs Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, and Rinfret.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and confirmed.

3. A communication was received from Mr. John A. Cooper, President of the Motion Picture Distributors and Exhibitors of Canada, relating to the proposed amendments of the Copyright Act. Said communication, dated May 11th, was addressed to Mr. W. G. Raymond, M.P.

4. The Committee proceeded to the further consideration of Bill No. 2, when Mr. Hocken proposed that a certain publisher's contract of which he believed Mr. de Montigny had knowledge, should be produced. Discussion followed during which Mr. Chevrier said there was no objection to show said

contract to the members. Mr. Irvine, Mr. Hoey, and Mr. Ladner also took part in the discussion. The Chairman ruled that said contract if produced and considered would be made part of the record. Mr. Hocken withdrew his motion.

5. Reverting to section four of the Act, Mr. Chevrier moved, Mr. Irvine seconding,—that said section be amended by adding thereto the following paragraph:—

“(4) For the purpose of this Act, “work” shall include the title thereto when it has other than a general, geographically descriptive or commonplace meaning.”

(See clause 4 in re-printed Bill, at page 2.)

Motion carried.

6. Reverting to subsection (2) of section eighteen of the Act, Mr. Chevrier moved, Mr. Rinfret seconding, and it was agreed,—that said subsection be amended by adding thereto the following:—

“Provided that, if it appears to the Governor in Council that such royalties.....last revision.”

(See clause 9, sub-clause (2) in re-printed Bill, at page 5.)

7. Reverting to paragraph “(c)” of section two of the Act, Mr. Chevrier moved that said paragraph be struck out.

Motion carried.

8. Mr. Ladner moved, Mr. Rinfret seconded, and it was agreed,—that the following section be added, as section “41A: (See clause 22 in re-printed Bill, at page 12.).

9. Reverting to section eighteen of the Act, Mr. Chevrier moved, Mr. Ladner seconded, and it was agreed,—that the following be added thereto as section “18B: (See clause 10 at “18B in re-printed Bill, at page 6.)

10. The Committee then proceeded to the further consideration of clause 5 of the Bill when Mr. Chevrier reviewed the position he had previously taken with a view to repealing the license clauses. Owing to certain representations which had been made to the Committee, however, he now begged to move, seconded by Mr. Rinfret, that the following be added to the said clause:—

“and the following, as a new section thirteen of *The Copyright Act, 1921*, is substituted for the repealed sections thirteen, fourteen and fifteen of the said Act;

“13. The Governor in Council may make such regulations as it may deem just with respect to the serial publication of literary works in Canadian magazines and periodicals”;
and that section two of *The Copyright Amendment Act, 1923*, be amended accordingly.”

The Commissioner of Patents and Copyright thereupon explained why the license clauses had been put in the Act of 1921.

The merits of the license clauses were also reviewed at considerable length by Mr. Ladner, Mr. Irvine, and Mr. Hocken. Mr. Chevrier then with the consent of the seconder withdrew his motion, and Mr. Ladner moved, Mr. Chevrier, seconded, and it was carried on division,—that sections thirteen and fourteen of the said Act as amended by section two of chapter ten of the Statutes of 1923 be repealed, and the following substituted therefor: (See clause 6 in re-printed Bill, at page 3.)

11. Section fifteen of the Act considered: Mr. Ladner moved, Mr. Chevrier seconded, and it was agreed,—that section fifteen of the Copyright Act, 1921, as amended by section two of chapter ten of the Statutes of 1923, be further amended by striking out the word “fourteen” in the second line of subsection (1), and in the second line of subsection (4) of the said section.

Mr. Chevrier moved, Mr. Ladner seconded, and it was agreed,—that clause 15 of the Bill as amended, be adopted.

12. Mr. Chevrier moved, seconded by Mr. Ladner,—that the Bill as amended be reported to the House.

Motion carried.

13. Mr. Ladner moved, seconded by Mr. Rinfret,—that in view of the necessity of having the Bill re-printed with its several amendments, the Committee meet again at the call of the Chair. Motion carried.

14. The Committee then adjourned.

V. CLOUTIER,
Clerk of the Committee.

THURSDAY, May 28, 1925.

1. The Committee met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present: —Messieurs Chevrier, Healy, Hocken, Hoey, Irvine, and Lewis.

In attendance:—Mr. O'Halloran.

2. The minutes of proceedings of the last meeting were read and approved.

3. *Communications:* The following communications were reported by the Clerk as having been received since the last meeting of the Committee, and were given consideration:

(1) From Mr. John A. Cooper, President of The Motion Picture Distributors and Exhibitors of Canada, Toronto, dated the 21st of May, 1925.

(2) From Mr. E. Moule, of the Temple Theatre, Brantford, dated the 14th of May, 1925.

(3) From Mr. W. H. McQuarrie, M.P., transmitting a telegram dated 14th of May, from "Famous Players Canadian Corporation," per J. R. Muir of Vancouver; also from Fred J. Hume, J. W. Rushton, and F. L. Kerr, a telegram (undated) on behalf of "Westminster Radio Station," "Edison" and "Royal" Theatres; also from "Associate Amusements of British Columbia, Vancouver, per R. Rowe Holland, dated the 13th of May, 1925.

(4) From The Electric Shop Limited of Saskatoon, per D. F. Streb, dated the 16th of May, 1925.

(5) From Mr. F. A. Magee, Ottawa, on behalf of "The Incorporated Society of Authors, Playwrights & Composers, London, England, per G. Herbert Thring, letter dated 7th of May, 1925.

4. The Chairman informed the Committee that he had obtained this morning a copy of the finally revised Bill No. 2, which carried certain corrections made by the Law Branch. Said corrections were considered and approved.

5. Reverting to two communications signed respectively by Mr. T. G. Marquis, and Mr. Lorne Pierce, which are set out at page 263 of the proceedings and evidence, Mr. Lewis moved that Dr. Fallis' letter be also printed in the record. Motion carried. (*See letter herein following*).

6. Mr. Chevrier moved, Mr. Healy seconded, that the Committee recommend, in its report to the House, the printing of one thousand copies of its revised proceedings and evidence, for distribution, in the usual proportion in respect of the English and French languages, Motion carried.

7. The Committee then proceeded to consider its Third Report, a draft copy of which was read and approved.

Mr. Lewis thereupon moved that the said report be adopted and presented to the House. Motion carried. (*See Report herein*).

8. The Committee then adjourned *sine die*.

V. CLOUTIER,
Clerk of the Committee.

LIST OF NAMES OF PERSONS WHO GAVE EVIDENCE BEFORE THE COMMITTEE

Name	Residence
Appleton, F. F. Publisher.	Toronto.
Beck, Edward. Canadian Pulp & Paper Association.	Montreal.
Berliner, Edgar M. President Victor Talking Machine Co., Limited.	Montreal.
Burkan, Nathan. Counsellor, American Society of Composers, Authors and Publishers.	New York City.
Burpee, Lawrence J. National President, Canadian Authors' Association.	Ottawa.
Cartier, J. N. <i>La Presse</i> Broadcasting Station.	Montreal.
Combs, Robert H. Canadian Radio Trades Association.	Toronto.
Constantineau, Hon. A. Judge and Author.	Ottawa.
de Montigny, Louvigny. Councillor, Canadian Authors' Association.	Ottawa.
Gibbon, J. Murray. Ex-President, Canadian Authors' Association.	Montreal.
Guthrie, Norman G. Counsel, Canadian National Railways (Broadcasting Stations).	Ottawa.
Hahn, James E. De Forest Radio Corporation.	Toronto.
Harrison, W. F. Canadian National Newspapers and Periodical Ass'n.	Toronto.
Haydon, J. A. P. President, Ontario and Quebec Conference, Typographical Union.	Ottawa.
Jamieson, Henry T. Chairman, Canadian Performing Right Society.	Toronto.
Kelly, George M. Counsel, Publishers' Section, Toronto Board of Trade.	Toronto.
Kennedy, Howard A. Member, Montreal Branch, Canadian Authors' Association.	Montreal.
Leacock, Stephen B. Author.	Montreal.
Macbeth, Mrs. Madge. President, Ottawa Section, Canadian Authors' Association.	Ottawa.
McKenzie, J. Vernon. MacLean Publishing Company.	Toronto.
Robertson, E. Blake. Phonograph Records, Ryerson Press & Radio Broadcasting Stations.	Ottawa.
Rose, Dan A. Canadian Copyright Ass'n.	Toronto.
Rosenthal, Julius C. General Manager, The American Society of Composers, Authors and Publishers.	New York City.
Surveyer, Hon. Edouard Fabre. President, Montreal Section, Canadian Authors' Association.	Montreal.
Sutherland, Wallace A. Printer, Toronto Typothetae.	Toronto.
Thompson, Alfred E. Canadian Representative, International Typographical Union in Canada.	Toronto.
Thompson, Gordon V. General Manager, Leo Feist Limited.	Toronto.

MINUTES OF EVIDENCE

COMMITTEE ROOM, 436,
HOUSE OF COMMONS,

March 10, 1925.

The Special Committee appointed to consider Bill No. 2, an Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Hocken, Hoey, Irvine, Lewis, and McKay.

In attendance:—Mr. George F. O'Halloran, Commissioner of Patents and Copyrights.

The CHAIRMAN: If it is agreeable to the Committee, I would suggest that no discussion take place this morning, as gentlemen have come from a distance to give evidence, and I think we should hear them.

Hon. MEMBERS: Agreed.

Mr. IRVINE: I move that we hear the authors first.

Mr. CHEVRIER: With all due deference, I do not think that that is the proper procedure.

The CHAIRMAN: In what way would you vary it, Mr. Chevrier?

Mr. CHEVRIER: I am moving that "Sections 13, 14 and 15 of the said Act as amended by section 2 of chapter 10 of the Statutes of 1923 are repealed," and I would suggest that if there are any objections to these clauses we should hear them. I would like to hear the objections of those who say that those sections of the Act should not be repealed. The onus is on them to say why they should not be repealed.

The CHAIRMAN: Some of these gentlemen have come from a distance and perhaps we might hear them in order that they may return as quickly as possible.

Mr. CHEVRIER: I move that Mr. Harrison be called.

The CHAIRMAN: Does Mr. Harrison represent the publishers?

Mr. CHEVRIER: I do not know whom he represents, but he is on the opposite side.

The CHAIRMAN: It has been moved that we hear the authors first and there is an amendment by Mr. Chevrier that we hear Mr. Harrison.

Motion carried.

LAWRENCE J. BURPEE called and sworn.

By Mr. Chevrier:

Q. Mr. Burpee, whom do you represent?—A. I represent directly the Canadian Authors' Association.

Q. What is the Canadian Authors' Association?—A. The Canadian Authors' Association is a national organization made up of a number of branches and having a membership altogether of nearly 1,000.

Q. Are you seeking any remedial legislation with reference to copyright?—A. We are seeking to repeal the licensing clauses particularly. We are interested

in every feature of the proposed bill, but we are particularly interested in the licensing clauses. I have, sir, a formal statement that I would like to put in, or read to you, if I may; and then I shall be prepared to answer any questions that the Committee desire to put to me. Is that your pleasure?

Mr. CHEVRIER: I would like to hear that statement.

The CHAIRMAN: Proceed with your statement, Mr. Burpee.

The WITNESS: I represent here the Canadian Authors' Association, a nation-wide organization with nearly a thousand members. In what I have to say on copyright I am expressing not so much my own views, which are unimportant, as the views of the Canadian Authors' Association. That society includes most of the novelists, historians, poets and essayists of the Dominion, members of many of our college faculties, and a number of the ablest journalists of Canada, as well as some of the best known of our artists and composers; men and women who, as the Provincial Secretary of Quebec said a few days ago, are a much more real and tangible asset to the country than many people seem to imagine. Indirectly also I speak for the Royal Society of Canada, for the Canadian Historical Association with its fifty affiliated organizations for the Institut Canadien, the Ontario Library Association, the Folk Lore Society, the Canadian Women's Press Club and several other societies.

I shall submit resolutions or letters from these organizations.

The members of these organizations are of course interested, as every intelligent Canadian should be, in all the provisions of the present Bill, but they are mainly concerned in the proposal to repeal the licensing clauses, and it is to this feature of the bill that I shall direct what I have to say. I should like to say at the outset that, while at the present moment we and our friends the printers seem to view the licensing clauses from opposing angles, we have none but the most friendly feelings for them, and feel sure that when they have taken all the facts into consideration they will join us in asking for their repeal.

It seems a little unfortunate that a matter of this kind, a matter involving one of the most obvious of human rights, the right of a citizen of a civilized state to do what he pleases with his own property, should be dragged down to a lower plane. In the copyright debate of 1923 Parliament was urged to "take into consideration the fact that the authors of Canada represent only a very small group of men in comparison with the artisans engaged in the printing and publishing business in Canada." It is perhaps open to question if the voting strength of Canadian authors, musicians and artists, and of the thousands of Canadians who unquestionably stand behind them in asking for the repeal of the licensing clauses, is quite so negligible as has been represented; but in any event we prefer to consider the matter as one of principle not one of votes.

It has also been suggested more than once that vast interests were concerned in the maintenance of the licensing clauses, including the entire publishing and printing industries of the Dominion. What are the facts? With a few unimportant exceptions, the publishing industry of Canada, both book and periodical, is centered in Toronto. I am speaking of English publishers. The situation so far as French-Canadian books and periodicals is concerned is entirely different, and is hardly affected to any extent by the licensing clauses. Of the Toronto publishers, some are branches of big English houses; others are jobbers, that is to say they handle in Canada the product of English and American publishers. Only a very limited number actually publish Canadian books printed in Canada; and, if I am not mistaken, only one of these maintains its own printing plant. So that all the rather grandiloquent phrases about jeopardizing immense investments, imperilling national interest, injuring thousands of Canadian workmen, and putting the factories of Canada out of business, boil down to the problematical advantage or disadvantage of a handful of Toronto printers.

[Mr. Lawrence J. Burpee.]

At three successive annual meetings the Canadian Authors' Association has gone on record as unalterably opposed to the licensing clauses, as an infringement of the inalienable right of an author to do what may seem best to him with the fruit of his own brain. That right is unchallenged in any other civilized country except the United States, and even the United States has too much national self-respect to insult its men-of-letters by shackling them with such a provision as that embodied in the Amending Act of 1923.

By that Act the licensing clauses "shall not apply to any work the author of which is a British subject, other than a Canadian citizen, or the subject or citizen of a country which has adhered to the (Berne) Convention." Could one imagine a more humiliating provision—humiliating to Canadian authors, but infinitely more humiliating to their country. It simply means that, while the foreign author is protected by law from the operation of these clauses, their full burden falls upon the Canadian citizen. The poor devil of a Canadian writer is made the victim, while the mantle of Canadian justice and Canadian freedom is thrown over the authors of France and England, Italy and Spain.

By Mr. Hocken:

Q. Why is that?—A. I do not know, sir. Those who drafted the Act know, I suppose.

Q. Do you not really know why?—A. No, I do not know.

Mr. HOCKEN: Go ahead.

The WITNESS: Even the Bolshevik and the Hun are protected, at the expense of our own people. Someone had described the licensing clauses as legalized piracy and the amending Act of 1923 as hamstringing the native-born. The ultimate victim is, in fact, the native-born Canadian because, according to several eminent legal authorities, even the man born in England but now living in Canada, who has retained his British citizenship, could claim exemption from the operation of the licensing clauses.

By Mr. Lewis:

Q. What do you mean by "the man born in England but now living in Canada and retaining his British citizenship"?—A. I believe it is possible for a man born in England to become a resident in Canada and still retain his British citizenship.

By Mr. Chevrier:

Q. Is that not so in the case of Mr. Stephen Leacock?

The WITNESS: Each nation has its own way of honouring its man of genius. Our way is to treat him like a dog.

We talk about copyright—but what is copyright? The dictionaries define it as the legal right of an author—not of his printer—to print or publish his literary or artistic work exclusively of all other persons. The Act of 1921 defines it as "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever." And the context makes it plain that that sole right is vested in the author, or is presumed to be vested in the author, the man who actually created the work to be protected. The copyright law is supposed to be a law for the specific purpose of protecting authors, not printers or publishers or booksellers. And yet we have had the extraordinary situation of a Canadian government official, charged with the duty of protecting the interests of authors in the matter of copyright, saying in an official memorandum for the information of Parliament that the bill which became the Act of 1921 "affords the publishers the protection of the licensing sections of the Act as against the resident Canadian author."

In the 1923 debate someone was very insistent as to the "extraordinary benefits" that were being given to Canadian authors by the Act of 1921, and

[Mr. Lawrence J. Burpee.]

asked why these "extraordinary rights" should be granted without compensating obligations. What are these "extraordinary benefits" or "extraordinary rights?" Even without the heavy handicap of the licensing clauses they mean just this for the average Canadian author, that he sweats over his manuscript for six or eight months and in the end does not begin to make as much out of it as the printer who puts it into type. Nevertheless, this is the same Canadian author against whose rapacity the printer is to be protected. Instead of talking about the Act of 1921 as extraordinarily beneficial to Canadian authors, or even as designed to protect the rights of Canadian authors, would it not after all be more just and accurate to admit that it is quite clearly an Act for the protection of Canadian printers—and, as we believe, it fails even in that.

The opposition of the various Canadian organizations which I have mentioned, to the licensing clauses, is based upon two grounds. They object to them as utterly wrong in principle, and as equally unsound in practice. Even in this very materialistic age, I think we may admit that the first object is the more important. The licensing clauses are wrong in principle because they deny the very right which the Copyright Act is supposed to conserve—the right of an author to be the judge and the sole judge as to when, where and in what manner he shall publish his own work. "The protection of authors' rights" said a Senator who is himself one of the most scholarly and brilliant of Canadian authors "should be the paramount object of a copyright law. They are the producers; it is their brain, their imagination, their intellectual effort that gives life to the book, to the statue, to the painting, or to the musical composition which is given to the public. These are their property, and nobody has a right, nobody should be allowed the right, to take it from them." But, he adds, the licensing clauses did that very thing.

As to the practical side of the question, it has been repeatedly argued that the licensing clauses would be of material advantage both to Canadian authors and Canadian printers. Well, the whole question is rather academic, because I am informed that up to the present time the only license that has been asked for or obtained is for a cook book. That, I suppose, bears out the old saying that

We can live without poets or painters or books
But civilized man cannot live without cooks,

or words to that effect.

But so far as the Canadian authors are concerned, they should surely be the best judges as to what is best for themselves, and they are practically unanimous that, altogether apart from the principle involved, the licensing clauses are not and could not possibly be of any material benefit to them. After all, the thing is sufficiently obvious. An author places his manuscript, let us say, with a New York publisher. In ninety-nine cases out of a hundred he disposes of it on a royalty basis, usually ten per cent. The fact that part of the edition is sold in the United States and part in Canada does not affect his receipts one iota. The only difference that the invoking of the licensing clause would make would be that without them he is sure of ten per cent on the sales in Canada, while with them he might be lucky to get half that amount.

As to the benefit of the licensing clauses to Canadian printers, one really wonders where those who worked so strenuously to secure the adoption of the Act of 1921 got the idea that it was going to be the salvation of the printing trade in Canada. I believe I am justified in saying that few if any of the recognized publishing houses in Canada are at all likely under any circumstances to take advantage of the licensing clauses. The sale of Canadian books in Canada is not by any means a gold mine either to publishers or authors. All the existing Canadian publishers have relations, probably mutually satisfactory,

with one or more of the American and English publishers. Why should they wish to exchange an arrangement by which the big foreign house takes the expense and risk of publishing while the Canadian firm merely handles a certain proportion of the finished book, for one under which the expense and risk would fall upon their own shoulders? They would have a great deal to lose and precious little to gain by such a change. And if the recognized Canadian publishers are not going to use the licensing clauses, who is? The only possible alternative is a printer who purposes to take out a license and print and publish the book himself. But if any printer were so ill-advised, he would probably soon repent of his folly. The marketing of a book is a much more intricate and uncertain problem than its printing, and the risk of financial loss would be out of all proportion to the very remote possibility of a profit. It is hardly conceivable that anyone not already in the publishing business would undertake such a very risky transaction. As a matter of fact, no one who really understands the situation imagines for a moment that the licensing clauses will ever be used except in very exceptional circumstances. The old copyright law of Canada contained for years what amounted to substantially the same provision, and I am informed that it remained a dead letter. The clauses are of very little if any advantage to the printers of Canada, they are of no conceivable benefit to anyone else, they are a blot upon the intelligence and sense of fair play of Canadians. There can be very little to lose and much to gain by repealing them; and I am confident that I voice the opinion not only of the members of the Canadian Authors' Association and of the other organizations mentioned, but of all fair-minded Canadians—including the printers themselves when they come to realize the real situation—in urging that the licensing clauses of the Copyright Act be repealed.

By the Chairman:

Q. Does anyone wish to ask Mr. Burpee a question?

Mr. HOCKEN: This evidence will all be printed?

The CHAIRMAN: Yes, it will all be printed.

By Mr. Hocken:

Q. Mr. Burpee, do you know of any author who has suffered by the licensing clauses?—A. I cannot say as to that, sir.

By Mr. Chevrier:

Q. Do you know of any printer who has suffered?—A. I have not heard of any. The licensing clauses, so far as I can ascertain, have been completely innocuous, they have done no good, nor have they done any harm to anyone. Our principal objection is to the principle involved.

By Mr. Hocken:

Q. No author has suffered?—A. No.

By Mr. Chevrier:

Q. And no printer?—A. No.

By Mr. Lewis:

Q. Do you know of an instance where a printer has administered the property of the author without his consent, in Canada?

Mr. CHEVRIER: That would be done under the licensing clauses.

By Mr. Irvine:

Q. Would you explain just a little more fully what principle is involved in these clauses and how it humiliates the authors, and what you hope to gain for

[Mr. Lawrence J. Burpee.]

the authors by the repeal of this Act?—A. I am afraid I cannot, sir, put the thing any more plainly than I have put it. It is a matter of principle. I think I made it clear.

Q. What is the principle to which you refer?—A. The principle that the author has the right to do what he sees fit with the product of his own brain. That principle is recognized in all other countries. It is, I think, one of the bases of the Berne Convention, and is denied by the Act of 1921.

Q. Will you explain just how it is denied?

Mr. CHEVRIER: I think I know what you mean, Mr. Irvine. I think it could be put this way.

By Mr. Chevrier:

Q. When you made the statement to which Mr. Hocken took objection, could "one imagine a provision more humiliating to a Canadian author"—how is that worked out by the provisions of the Act now? Is that the result of the licensing clauses?—A. That is specifically the result of the amending Act of 1923.

Q. Will you explain its effect—A. (Continuing)—which brought the Act of 1921 within the four corners of the Berne Convention, but at the same time put the handicap entirely upon native-born Canadians.

Q. Is it not this to which you object, that the Canadian author in order to be protected in Canada must print in Canada or undergo the humiliating effect of being licensed, while a Japanese printing his book in Czecho-Slovakia would be protected in Canada, while the Canadian author would not be?—Is that not the difference?—A. Quite so.

By Mr. Irvine:

Q. Would that result in the Canadian people having access to a greater amount of literature than they otherwise would have? Would it have any effect on the literature coming into this country?

Discussion followed.

Witness retired.

The following resolutions were submitted by Mr. Burpee:—

Resolution on Copyright adopted by Canadian Authors Association at the annual meeting in Quebec, May 20, 1924.

COPYRIGHT

Whereas, on the fourth day of June, 1921, an "Act to amend and consolidate the Law relating to Copyright," Chapter 24, 11-12 George V, 1921, has been assented to, and whereas said Act has come into force on the first day of January, 1924, by virtue of an "Act to amend the Copyright Act, 1921," being Chapter 10, 13-14 George V, 1923; and

Whereas, whilst the above mentioned new legislation was being drafted by the officials of the Department of Trade and Commerce, the Canadian authors did not have an opportunity to state their particular needs which the legislature should have provided for in order to give them the full protection that they claim; and whereas the memoranda submitted in 1921 and 1922 to the Department of Trade and Commerce by the Canadian Authors' Association, have never received the consideration which was their due; and whereas in the rules and regulations established to put into effect the new legislation on copyright, the suggestions made by the copyright committee of the Canadian Authors' Association to the officials of the Department of Trade and Commerce have also been ignored by the Department; and

Whereas several Canadian and unionist authors, playwrights, composers, artists and publishers, have requested Mr. Edgar Chevrier, Barrister and M.P. for Ottawa to introduce into Parliament a bill containing various stipulations with the object of amending the present Act by prescribing proper recourses and penalties not heretofore enacted, with a view to effectively restrain any counterfeiting or unlawful reproduction of their works and to afford them full protection of their rights; and

Whereas on the first day of April, 1924, Mr. Edgar Chevrier, M.P., has introduced into the House of Commons, a bill entitled: Bill 28, "An Act to amend and make operative certain provisions of the Copyright Act, 1921"; and whereas the copyright committee of the Canadian Authors' Association have been acquainted with and examined said Bill;

On motion of Mr. T. W. Allison, seconded by Judge F. W. Howay, it is resolved:—

That the Canadian Authors' Association, at their general meeting held in the City of Quebec on Monday, May 19, 1924, approve of the aforesaid Bill 28, introduced into the House of Commons on the first day of April, 1924, by Mr. Edgar Chevrier, Member of Parliament for Ottawa, by which bill Parliament is requested to adopt most of the amendments drawn up in the memoranda dated 1921, and 1922 of the copyright committee of the Canadian Authors' Association, said bill setting forth special recourses in special cases not provided for in the law now in force and embodying various provisions of the American Copyright law which lead towards the recognition of authors' rights and having for its general purpose to further harmonize our Canadian law with the revised Convention of Berne and with the British Copyright Act, 1911;

That the Canadian Authors' Association are of the opinion that said Bill 28 would satisfactorily supplement the Canadian copyright law now in force, and would also largely contribute to create an honourable career for the Canadian authors as well as to assure in our country the protection due to the works of Unionist authors, without hurting any other legitimate interest;

That the Canadian Authors' Association convey to Mr. Edgar Chevrier their congratulations and their thanks for the pains he has taken in inquiring into the authors' needs and in laying such needs before Parliament;

That the Canadian Authors' Association strongly recommend to the Government and to Parliament the adoption of said Bill 28; and that the present resolution be communicated to the Right Honourable the Prime Minister of Canada, to the Honourable the Minister of Justice, to the Honourable the Minister of Trade and Commerce, to the Honourable the Leader of the Government in the Senate, to the Honourable the Leader of His Majesty's Opposition in the Senate, to the Honourable the Leader of the Conservative party in the House of Commons, and to the Honourable the Leader of the Progressives in the House of Commons.

UNIVERSITY OF TORONTO

TORONTO, CANADA,

TORONTO, February 24, 1925.

Dear Dr. BURPEE,—I am writing you to say that the Royal Society went on record several years ago in favour of repealing the licensing clauses in the Copyright Act which are designed to make it possible to print the work of Canadian authors without their consent. As President of the Royal Society I wish to say that I know I am voicing the opinion

[Mr. Lawrence J. Burpee.]

of the Fellows when I state that we feel that this change in the Copyright Act should be made as soon as possible. As the Act stands it is most unfair to our authors, and also very unjust.

I wish the Canadian Authors' Association every success in its effort to have the clauses repealed.

Yours sincerely,

J. A. McLENNAN,
President, the Royal Society of Canada.

Dr. LAWRENCE BURPEE,
International Joint Commission,
Ottawa, Canada.

OTTAWA, 2 mars, 1925.

CHER MONSIEUR,—Les membres du Cercle Littéraire de l'Institut Canadien tiennent à assurer l'association des Auteurs canadiens de leur appui dans sa lutte au sujet de la loi des auteurs. Ils espèrent que les nouveaux amendements, proposés par M. Chevrier, seront adoptés, et qu'on verra disparaître de nos lois ce texte qui protège les étrangers et lèse les citoyens canadiens. Les travailleurs de la plume méritent, comme les autres, sinon la bienveillance, du moins la stricte justice.

Veuillez croire que nos membres sont prêts à vous appuyer dans toutes vos démarches.

REGIS ROY,
Président du Cercle Littéraire de l'Institut Canadien.

Monsieur L. J. BURPEE,
Président de la Société des Auteurs,
Ottawa.

OTTAWA, March 4, 1925.

DEAR MR. BURPEE,—On behalf of the Canadian Historical Association I desire to say that we are entirely in sympathy with the Canadian Authors' Association in their efforts to have removed from the Copyright law of Canada the obnoxious licensing clauses, which are an indefensible infringement of the rights of Canadian authors, and in direct conflict with the main purpose of the Copyright Act, as set forth in section 3, to secure to Canadian authors "the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever."

The Council of the Association expresses the hope that Parliament may be persuaded to see the injustice of the licensing clauses and by repealing them restore the damaged credit of Canada among the thinking people of the world.

Yours very truly,
C. M. BARBEAU,
Secretary.

LAWRENCE J. BURPEE, Esq.,
National President,
Canadian Authors' Association.

OTTAWA, March 2, 1925.

DEAR MR. BURPEE,—The Canadian Branch of the American Folk-Lore Society is greatly interested in the new Copyright Act now before the House of Commons.

[Mr. Lawrence J. Burpee.]

The members of our Society want to express their warm support of the amendments proposed. They hope that the House will give the Canadian writers, who strive along various lines to make Canada better known in the literary and scientific world, the protection they give to all the other classes of Canadian workers. They specially resent the licensing clause of the Copyright Act, which differentiates against Canadian citizens.

Our members are solidly behind the Canadian Authors' Association in its fight for right and justice.

Yours truly,

E. SAPIR,
C. M. BARBEAU,
GUSTAVE LANCTOT,
D. JENNESS.

L. J. BURPEE, Esq.,

President, Canadian Authors' Association.

RESOLUTION OF THE ONTARIO LIBRARY ASSOCIATION IN REFERENCE TO COPYRIGHT

The Ontario Library Association, representing the public libraries of Ontario, over 450 in number, through its executive committee, hereby endorses the position and contention of the Canadian Authors' Association of Canada in their attempt to secure the repeal of the so-called licensing clauses in the Copyright Act, and thus to obtain recognition of the right of Canadian authors to dispose as they may see fit of their literary work, with all the rights pertaining thereto.

GEO. W. RUDLEN, *President*.

E. A. HARDY, *Secretary*.

March 5, 1925.

JOHN MURRAY GIBBON called and sworn.

By Mr. Chevrier:

Q. Mr. Gibbon, are you prepared to give a clear-cut statement of the effect of the licensing clauses on Canadian authors?—A. Well, whether it is "clear-cut" or not will depend on what the audience think. I have not any written statement; I have only some notes.

Mr. Burpee has laid down the official statement from the Canadian Authors' Association and I wish just to confine myself to one phase—

Q. Before you go any further, Mr. Gibbon—whom do you represent?—A. I came here on your invitation. I do not know whom I represent, excepting that I have written four works of fiction and one historical book, and was the first President of the Canadian Authors' Association for the first two years of its existence, and am a member of the copyright committee and have a glimmering of a notion of what this Bill means.

Q. And you are speaking in the name of those? You represent those people?—A. Yes.

By Mr. Lewis:

Q. And you are against these clauses, are you?

Mr. CHEVRIER: It is this clear-cut statement he will make now.

[Mr. Lawrence J. Burpee.]

The WITNESS: I will only speak on one phase of section 13, of the Act, which Mr. Chevrier wishes to delete. I just wish to speak insofar as it affects books by Canadian authors. This section 13 has been opposed from the beginning by the Canadian Authors' Association as giving an unknown printer the opportunity to disturb a contract made between the Canadian author and his selected book publishers in Canada and the United States. I use the words "It gives this unknown printer the opportunity" because no responsible Canadian book publisher is or was likely to use this clause; it would be only used by a printer unable to get business in open competition. That is, so far as books of fiction are concerned, because——

By Mr. Hocken:

Q. Do printers publish books like this?—A. No.

Q. So it does not help the printers?—A. No. The usual practice of the Canadian author of fiction is to submit his manuscript to a Canadian publisher, who in most cases is located in Toronto, and who, if he likes the manuscript, will enter into negotiations for publication. Except in the case of a very popular Canadian author the Canadian market rarely exceeds 2,000 copies, and the cost of setting-up and printing in Canada is so high that an average work of fiction could not be profitably produced or marketed at the standard price for new fiction, namely \$2. That is generally the price for the work of fiction at present, both in Canada and the United States. The Canadian publisher, who is in almost every case affiliated with the American publisher, goes to his American affiliations to see if he can persuade the American house to take up this book and print an edition for the United States and he will purchase from the American publisher the 2,000 copies, with the imprint of his own name as Canadian publisher, at a price which will enable him to sell it in Canada at the \$2 figure.

Q. Would that work be done in the United States?—A. Yes. Out of that he would pay the Canadian author a reasonable royalty. I noticed in the Hansard debates that Mr. Hocken seemed to think that the Canadian author did not get his royalty from the Canadian house as well as from the American house. In my own experience I got royalties from both the Canadian and American houses. I certainly did on my last book. It depends on your contract.

Q. If your royalty is so much per book?—A. Yes, if your royalty is so much per book, and I got from the Canadian edition which has been published in the States, 10 per cent royalty on the retail price of \$2.

Q. But if you sold your copyright to a United States publisher for a certain sum of money?—A. No author who knew his business would do that.

Mr. CHEVRIER: No, it would be foolish.

By Mr. Hocken:

Q. But it is done?—A. You should not have to take care of fools. Anybody who knows his business works on a royalty basis. It is the common practice and it is only the greenhorn who would sell his copyright outright. He does not sell his copyright outright. He works on a royalty basis. The American publisher would also pay a royalty on the American edition which, in view of the large book-reading population in the United States would, of course, be larger. In this way, a large number of Canadian authors have been able to secure the Canadian publication with an average royalty of 10 per cent, whereas, if the American market had not been open, they could not have secured publication at all, excepting at their own expense.

[Mr. J. Murray Gibbon.]

Q. Then, this class of American market would suffer?—A. It would handicap it, as I will show you.

Q. It does not close the American market to the author?—A. Not absolutely, but it handicaps him in his bargain with the American publisher, because it would cut out the Canadian edition. Very few American houses will publish a work of fiction unless they see an opportunity for 5,000 copies. Doran will refuse to even look at a book unless he sees a printing order for a minimum of 5,000 copies. But if they have the Canadian sale of 2,000 copies they will generally take a chance on the balance of 3,000, knowing the Canadian order for 2,000 would cover the printing cost, although not all of the publishing costs, which are, as a matter of fact, very large. Now that is the actual practice of, I should say, 90 per cent of the Canadian authors of fiction. The extremely successful Canadian author goes direct to the American without bothering about any printing by the Canadian house. This section 13 as affecting books was inserted at the instigation of its promoters because of two claims; one was that it would benefit the Canadian author, and the second was that the Canadian printing industry needed the business. In actual fact, as far as Canadian authors are concerned, the only effect has been to handicap the Canadian author in selling his book to his most profitable market, namely, that of the United states. The American publisher who is working in partnership with the Canadian publisher in the book business—that is different from the magazine business—the Canadian and American book publishers are extremely friendly, and agree to divide the market, the Canadian publisher handling the Canadian distribution and the American the American distribution.

Q. Tell us just how it handicaps the Canadian author?—A. It does not handicap the book publisher, but it handicaps the author because, if he is only an average author, he would not get it printed in the United States at all unless the American publisher had these 2,000 copies to print.

Q. This does not prevent him getting the 2,000 to print?—A. It handicaps him in this way, that in the case of a successful author the American publisher sees the danger of an unknown printer butting in and interfering.

Q. But if he publishes in Canada the unknown printer cannot get in?—A. Yes, he can, as in the case of the "Boston Cook Book"; he got in.

By Mr. Chevrier:

Q. Under the license?—A. Yes. However, I am talking about Canadian authors, not American books. I am handicapped now—or I would be if I were not British born, I am fortunate in that respect in connection with this—we have had counsel's opinion on this, and if I were a native born Canadian author it would handicap me in dealing with the American publisher. He would say, Well, under the old system I can be sure of my printing costs being covered by my 2,000 copies, but now this is endangered; somebody may butt in, and it is a question whether it is worth my taking a chance on this book. Even successful authors like Frank Packard have been, I understand, handicapped in their dealings with American publishers.

By Mr. Lewis:

Q. Do you know if there are any leading lawyers who consider that British subjects in Canada come under this?—A. Yes. I can give you the names of two. Of course it would need a test case to prove it, but they say that British born authors who have never signed away their rights would come under this

[Mr. J. Murray Gibbon.]

Q. And the amendment to the Act of 1921, further amended in 1923, distinctly states that British subjects are not subject to these clauses, does it not?—A. I do not know.

Mr. CHEVRIER: That is the effect of the law; it is clearly stated in the 1921 amendment.

By Mr. Hocken:

Q. There has been no legal decision on that point?—A. No.

Mr. CHEVRIER: It is not necessary that there should be.

Mr. LEWIS: It says, "Shall not apply to any work the author of which is a British subject, other than a Canadian citizen, or the subject or citizen of a country which has adhered to the (Berne) convention."

The WITNESS: I am resident in Canada, but was born in Ceylon.

By Mr. Irvine:

Q. You are a Canadian citizen?—A. Yes, but I was born in another part of the Empire.

Mr. CHEVRIER: The Copyright Act of 1921 was amended in 1923. Sections 13, 14, 15 and 27—we are not concerned with section 27 at this moment, but sections 13, 14 and 15 are the compulsory licensing clauses; these sections shall not apply to any work the author of which is a British, other than a Canadian citizen.

Mr. LEWIS: I was born in the old land; I have been in this country 23 years, but I would be highly insulted if somebody told me I was not a Canadian.

Mr. CHEVRIER: For all intents and purposes, except for the purpose of this Act, you are, but if you want to avail yourself of the fact that you were not born in Canada for the purposes of the Copyright law, there is the distinction.

Mr. IRVINE: What we really want to do is make sure these gentlemen cannot slip out under this clause.

Mr. CHEVRIER: I tell you you cannot do it, and that because of this international law.

Mr. LEWIS: That is discrimination.

Mr. CHEVRIER: I know, but you cannot do it for the reason that Canada is now an adherent of the Convention of Berne. Britain is also, and for all purposes these citizens of Britain are unionist authors and you cannot legislate in Canada for unionist authors, but you can humiliate your own people. The law in 1921, Mr. Doherty's law, was that you could apply the exigencies of this section to everybody in Canada, but then England found out, the British authorities found out that our own legislators were wrong and in communications to the authorities of Canada they pointed it out, that it was inconsistent, that Canada could not be an adherent to the Berne Convention and yet discriminate against the unionist authors in Canada, so then they amended it in this way, saying, "If we cannot affect Mr. Gibbon who was not born in Canada, who is a unionist author; if we cannot attack Mr. Leacock, then we will legislate for our own nationals." The only remedy is this; you have to take it or lump it, or get Canada to withdraw from the Convention of Berne, and if it is good enough for Britain, it is good enough for us.

By Mr. Hocken:

Q. Mr. Gibbon, are you a citizen of Canada; do you vote?—A. I vote.

Q. You are a citizen of Canada?—A. I am a citizen of Canada.

Mr. CHEVRIER: Except for the purposes of the Copyright law.

The CHAIRMAN: Would you like to hear that section read, gentlemen?

Mr. IRVINE: I think we had better let the witness proceed.

The WITNESS: That is a question of international law, after all. One of the claims was the benefit to Canadian industry; let me take the facts. During 1924, as far as I could find, forty novels, works of fiction by Canadian authors, were printed. Now, the printers had the full benefit of this licensing clause, have had it for over a year, and so far they have not applied for a single license as affecting Canadian fiction. Forty novels were published in 1924.

By Mr. Hocken:

Q. You say there has not been a single application?—A. Not for fiction. There has only been one for an American cook book. Forty novels were published in 1924. Six were manufactured in Canada only because there was no market for them in the United States. Thirty-four were imported, of which twenty-eight were manufactured in the United States and six were manufactured in London. In the case of only two of these, as far as I can get information from the publishers, who are very secretive—in the case of only two of these would it have been possible to print the Canadian edition in Canada at a profit. One was Marshall Saunders' "Jimmy Goldcoast," which I am told was printed in the United States, and the other was Robert Stead's "Smoking Flax," which I am told was printed in the United States. "Jimmy Goldcoast" was imported, I understand, by the Musson Book Company, the Canadian manager of which is Mr. Appleton, who was one of the signatories to the telegram of protest to this bill; in spite of the fact that he had the opportunity to have this Canadian edition printed in Canada, he imported the books. And why did he import them? Because he knew, as a business man, that it was more economical to do so. That is why this clause is a dead letter.

By Mr. Chevrier:

Q. That is using the licensing clause for a club?—A. Yes. There is a case where one of the actual signatories to the protest was importing. Why didn't he use the clause? Because his firm is an honourable firm and would not take advantage of what is, in our opinion, a dishonourable way of getting this.

By Mr. Hocken:

Q. Would you think one year in practice would be sufficient to test this?—A. Why not, when he had it in his hands?

Q. Would you consider one year's practice a sufficient test to determine this?—A. They have been fighting for this for twenty years.

Q. That does not answer my question.—A. I may just say that this, so far from protecting them, as they claimed—this is one reason why they demanded this clause, because it was going to be a great benefit to the Canadian industry, but we contended it would not be a benefit to the industry, and as a matter of fact it has not brought them the business.

By Mr. Chevrier:

Q. And at the first opportunity where they could use the club they did not use it, so the club must be a dead one.—A. Yes.

By Mr. Hocken:

Q. I was just asking Mr. Gibbon's opinion as to whether one year was a sufficient test.—A. I certainly think in the case of fiction it is a very good test. I could give you still stronger figures on the American books, but I am confining myself to Canadian authors. Mr. Appleton of the Musson Book Company

[Mr. J. Murray Gibbon.]

imports, if I am not mistaken, Zane Grey. I believe they imported the plates of his last book already set up, instead of giving the printing industry this business. Why did they not set them up in Canada and support their friends?

By Mr. Chevrier:

Q. That is the second instance where they could have used the club?—A. Yes, and in the case of an American book.

By Mr. Hocken:

Q. That meant it was printed in Canada?—A. Yes, but it was cheaper to import the plates, and that is our contention, that this is governed by economics. Section 13, the one Mr. Chevrier wishes repealed does not specify that the printer who applies for the license must be a good one who would advertise and push the sales to the author's satisfaction; the author selects a publisher for these reasons as well; he wants a book pushed, advertised and sold. Now, the great advantage of being in touch with an American publisher is that an American publisher is a heavy advertiser. Mr. Frederick Melcher, editor of the Publishers' Weekly, told me the average expenditure on a work of fiction by an American publisher was seven per cent of the net cost, and sometimes as high as fifteen per cent. The Canadian publisher is a very poor advertiser, comparatively speaking, and as a matter of fact the sales in Canada, even of the Canadian edition, are largely influenced by the advertising done in the United States. Advertising in the New York Times Book Review does more to sell a Canadian book in Canada than a review in the Montreal Gazette.

Q. Do you think this comparison of the percentage is fair? Has the Canadian publisher the same facilities for advertising?—A. He has the same facilities but not the same margin of profit if he prints in Canada.

Q. But he only has a very few publications in which he can advertise.—A. I am not criticising Canadian publications; they reach the market very well, but the Canadian publisher has to work on a very small margin, so small that he has not very much money for advertising, and he is going to have still less when he is forced to print for the Canadian edition. It is owing to this American market that a great many of the Canadian authors have been recognized in Canada; it is a curious thing, but it is a fact. L. M. Montgomery won her success first in the United States and then was recognized in Canada. Ralph Connor's great success was first in the United States. Arthur Stringer was first of all recognized in the United States and then in Canada. Gilbert Parker told me Canada was the last country that had recognized him. Naturally, Canada has a small market, a small number of readers, and they are affected by the foreign verdict.

I will not take up any more of your time, but I will just emphasize this, that Canadian printers, as far as books are concerned and particularly fiction, have had ample time to make use of this clause, but it has proved a dead letter. I also say that no self-respecting Canadian publisher would use it, and I know one publisher who told me that it would completely put him out of business, out of good relations with other publishers if he were to use it. It is a violation of good ethics and good business; it is not wanted by the Canadian authors; it is not really used by printers; it is a dead letter which stinks in the nostrils of all right-thinking men; it is a corpse, and I say it should be removed.

By Mr. Chevrier:

Q. Let us take up some of these books and make that plain, some books of which you spoke. There were thirty-one imported?—A. Thirty-four imported, twenty-eight from the United States and six from England.

[Mr. J. Murray Gibbon.]

Q. How does the Copp Clark Company work that out, for instance, the Locke book?—A. That was published, if I am not mistaken, in New York. I do not know what Frank Packard's sales in Canada would be. I am under oath, and I do not know that I should even guess.

Mr. HOCKEN: Do not guess.

The WITNESS He is a very popular author in Canada, and yet Copp Clark—they are manufacturers as well as printers; they have a printing plant, if I am not mistaken. Perhaps somebody can correct me. Why do they not print their Canadian edition of Frank Packard, who is one of the most popular authors in Canada? They imported his book, because it was economical and they were perfectly right to do so.

By Mr. Chevrier:

Q. It would be done supporting these licensing clauses?—A. I do not know whether they are members of the publishers' section of the Toronto Board of Trade; they have not been enthusiastic for the authors, I will say that.

Q. But they did not print their Canadian edition here?—A. No, not of the Locke book.

Q. And even at that the licensing clauses—A. They could have used the licensing clauses and they had their own plant to do it.

Q. That was the third time they did not use the club. What about the "Divine Lady"?—A. The "Divine Lady" is a peculiar book; I do not think the Canadian publishers knew that it was a Canadian. The "Divine Lady" is supposed—it is still not definitely sure—to have been written by L. Adams Beck, who lives in Victoria. That book is fiction and jumped into success not immediately, but after about a month. It is now the best seller in the United States and, I believe, the best seller in Canada. It would have been perfectly open under this Act for any Canadian publisher to apply for a license and probably make a profit on a Canadian edition of that, but it was in the hands of a reputable publisher in Canada, and the other reputable publishers in Canada said, "Go ahead, you are in luck; continue to import it." They were perfectly right; no business can go on if everybody is cutting everybody else's throat. That is a story of the life of Lady Hamilton and Lord Nelson, a wonderful novel, a wonderful history. They have had twelve large printings in the United States and now it is selling well in Canada, but no publisher has applied for a license and no reputable publisher would, because this clause is a dead letter.

Mr. CHEVRIER: That was the fifth time they could have used the club inside a year.

By Mr. Lewis:

Q. Then this clause is not working against Canadians. They have not used it?—A. They might use it. Take a smart American business man of the kind I know. When you deal with a publisher down there he would use this as a means of lowering his royalty to the author.

By Mr. Chevrier:

Q. What do they do—

By Mr. Irvine:

Q. Who is the author of "The Divine Lady"?—A. "E. Barrington." Really the author is said to have been L. Adams Beck, who is a lady.

Q. Where was she born?—A. I think she is Canadian born.

Mr. IRVINE: No, she was born on the other side.

The CHAIRMAN: In the United States?

Mr. IRVINE: In Great Britain.

WITNESS: She is a cosmopolitan. She has travelled a great deal. I have heard she was born in Canada.

By Mr. Chevrier:

Q. What about Johnston Abbott's "Leroux"? Where was that made up?—A. That was printed in New York and imported by the MacMillan Company into Canada.

Q. Let us see where the MacMillan people stand on this thing?—A. I do not think that its circulation in Canada would amount to more than 2,000; I may be wrong.

Q. We will find out whether the MacMillan people are enthusiastic about these sections. It was not printed in Canada, it was imported into Canada?—

A. If it was printed in Canada, they probably lost. The MacMillan Company have a house in New York as well as a house in Toronto, and also a house in England. Naturally, they like to get the joint market. It is more economical to have just one setting up.

Q. Anyway, that book was not printed in Canada?—A. No, it was imported.

Mr. CHEVRIER: Then that would be the seventh time that they could have used the club.

Mr. IRVINE: What club are you referring to?

Mr. CHEVRIER: The licensing clauses. We were told that it had not been in operation long enough, but here we have seven instances inside of fourteen months where the licensing clauses could have been used.

Mr. IRVINE: There are seven cases which you call seven clubs. Do you mean organizations?

Mr. CHEVRIER: No, the stick held over my head.

Mr. IRVINE: In the cases you have mentioned, the seven cases, whose head would have been hit by the club?

Mr. CHEVRIER: The author's head.

By Mr. Lewis:

Q. Have you any difficulty in getting books printed by Canadian publishers?—A. It depends on the quality of the book.

Q. As a result of the larger market, we will say, in the United States, do you find as a result of the present licensing clauses any difficulty in getting United States publishers to print Canadian books?—A. Their tendency would be to give Canadian authors a smaller royalty.

Q. In spite of the fact that possibly only 2,000 books would be sold, that, you say, is the average?—A. I am thinking about the popular authors who might be subject to license. The fellow who might be hit might be Frank Packard. The last three books of Ralph Connor have been imported. These popular authors are the ones who would be hit. Ella Montgomery might very well be hit.

Q. I do not like to discriminate, Mr. Chairman, in this matter of an author born in England and resident in Canada, but I would like to ask Mr. O'Halloran does he consider Mr. Leacock or Mr. Gibbon to be a Canadian citizen within the meaning of the Act.

Mr. O'HALLORAN: I would not care to express any opinion. A citizen is not defined in this Act. I am not aware that it is defined generally in any Canadian Act; nor am I aware that the court has defined the term. "Canadian citizen" is a term that was used not in this Act but in somewhat similar Acts with the approval of the then Minister of Justice, Mr. Doherty, and it was his

[Mr. J. Murray Gibbon.]

opinion that no difficulty would arise as to the meaning of the term. Any British subject who had acquired a Canadian domicile would be a Canadian citizen if he had made Canada his permanent residence. I think it was the opinion of Mr. Doherty that he would become a Canadian citizen.

By Mr. Lewis:

Q. That would not involve relinquishing in writing his British citizenship. There is no Act in Canada which demands that?

Mr. O'HALLORAN: No.

Mr. CHEVRIER: We are stepping on very thin ice now.

Mr. O'HALLORAN: So far as I am concerned it is quite thick.

Mr. CHEVRIER: Do you mean to say that this section as worded there does not operate to make the same distinction that we have just made in the case of Mr. Gibbon and Mr. Leacock? Do you mean to say that?

Mr. O'HALLORAN: Mr. Chevrier, I expressed no opinion at all. I said I would not undertake to say what the term meant, as it was not defined.

Mr. CHEVRIER: You express no opinion?

Mr. O'HALLORAN: I said it is not defined by the court. I gave an explanation of how the term happened to be used.

Mr. CHEVRIER: You are not denying that the effect of that is to put Mr. Gibbon and Mr. Leacock who were born outside of Canada, outside the pale of these Licensing Clauses?

Mr. O'HALLORAN: I cannot make myself any clearer than I have done.

Mr. CHEVRIER: Answer that question.

Mr. O'HALLORAN: I am not going to construe the term.

Mr. HOCKEN: He has not assented to your proposition.

By Mr. Lewis:

Q. Mr. Gibbon, I believe you stated in your address that this book of Zane Grey was printed in Canada, but that the plates were imported?—A. That was the information I had; I may have been wrongly informed.

Q. I have heard that a book was printed in Canada. Would that necessarily mean that the type was set up in Canada?—A. Not necessarily; the plates can be imported and the book printed.

By Mr. Chevrier:

Q. That is covered by the Act. The Act only says "printed"; it does not say "manufactured, lithographed, bound," and the like; it says "printed"?—A. You are not helping the printing industry as you could, if you have a book set up in the United States. The United States Copyright Act insists that the book must be set up.

By Mr. Lewis:

Q. Your information is that the plates of this book were received from the United States?—A. My information is to that effect, and if it was cheaper to do so, I do not blame the publisher for doing it. Only, he could have used the Act, and he did not do so.

Q. Do you know how prices compare in the United States and in Canada?—A. I may be wrong, but Zane Grey's book would be \$2 in the United States, probably; his royalty would depend on the individual contract. Zane Grey, I should say, would get as much royalty in Canada as in the United States.

[Mr. J. Murray Gibbon]

By Dr. McKay:

Q. Are these books printed more cheaply in the United States than here?—A. In bulk. Of course the Canadian importer has got to pay the tariff.

Q. What does that amount to?—A. I do not know but whatever it is they have to pay the tariff.

Q. Does the author pay that or the publisher?—A. The publisher here has to pay that duty, and that means less money for advertising and pushing.

Witness retired.

The CHAIRMAN: Who is the next witness?

Mr. CHEVRIER: So far as I am concerned, I have only Professor Leacock to call and he has not turned up yet. The other witnesses I may have will be local witnesses. I am willing to forego any other witnesses for the present if the other side have witnesses to be heard.

F. F. APPLETON called and sworn.

WITNESS: Mr. Chairman, and gentleman of the Committee, before I read the few remarks that I have written out, perhaps I had better answer Mr. Gibbon.

By Mr. Chevrier:

Q. Will you tell us first whom you represent?—A. That will come out in my remarks.

Q. I would like to know now?—A. I will give you that when I deal with my own case.

Q. I want it now?—A. Will I give you the whole thing now?

Q. I want to know whom you represent?—A. I represent the minority of the Toronto Board of Trade who are the members more concerned with manufacturing in Canada than some of the other publishers—the publishers' section of the Board of Trade.

Q. The minority of the Book Section of the Board of Trade?—A. The Publishers' Section; not the Board of Trade itself, but the Publishers' Section.

Mr. HOCKEN: A numerous body.

By the Chairman:

Q. You mean the Board of Trade of Toronto?—A. The Board of Trade of Toronto.

By Mr. Chevrier:

Q. Do you say that you represent the minority of the Publishers' Section of the Board of Trade of Toronto?—A. Yes.

Q. What is the total membership of that Book Section?—A. About twelve; practically all the Canadian publishers with the exception of Copp Clark Company.

Q. What is the minority that you represent?—A. Those firms.

Q. Out of the twelve, what number do you represent?—A. I should say about three.

Q. Who are they?—A. Well, I am only speaking for my own firm.

Q. What is it?—A. In this case, the Musson Book Company, Limited.

Q. Is that the only one you represent?—A. There are others who are lukewarm—

Q. Whom do you represent?—A. I will speak for the Musson Book Company.

Q. Only?—A. I will speak for those whom Mr. Kelley does not speak for.

[Mr. F. F. Appleton.]

Q. Mr. Kelley may die within the next minute and we would not know whom he represented. I want to know whom you represent?—A. The Musson Company.

Q. Is that all?—A. I will speak for them.

Q. Only for them?—A. There are other firms—I have not it in writing—but I am voicing their opinion. First of all, I would like to correct the impression given by Mr. Gibbon's statement. He said that "Jimmy Goldcoast" was printed in the United States. "Jimmy Goldcoast" was not printed in the United States, it was printed in London.

Q. What is your knowledge for saying that?—A. My own knowledge. I happened to be responsible for the publication of it, and "Jimmy Goldscoast" was arranged for publication before this Act of 1921 became operative. If we had thought for one minute that the licensing clauses applied to it, it is quite likely we would have printed it in Canada. The next edition will be printed in Canada, and at a lower price.

Q. That is your statement?—A. That is my statement.

Q. When will the next edition come out?—A. As soon as we sell the first.

Q. Has that a great sale? Do you expect it to be sold out soon?—A. Some time this year.

Mr. IRVINE: I would suggest that the witness be allowed to give us his little story.

Mr. CHEVRIER: He has not started his statement. If my friend will only allow me, when Mr. Appleton makes his statement, I will not interrupt him; but at present, he is contradicting Mr. Gibbon, and I have a perfect right to question him. I would call the Chairman's attention to the fact that Mr. Leacock has now come in.

The CHAIRMAN: Mr. Appleton says he will not be very long.

By Mr. Chevrier:

Q. Before you proceed, will you leave the resolution of the minority whom you claim to represent appointing you as their delegate?—A. I have already said that as I have nothing in writing from them, I will speak for the Musson Book Company. Our name is as good as any other publishers'. The second statement of Mr. Gibbon was that "Smoking Flax" was printed in the United States. It was printed in Canada, and if the licensing clauses had not been operative, no doubt it would have been printed in the United States.

By Mr. Hocken:

Q. That is one case where it worked?—A. That is one case. The next case was the case of Zane Grey. Zane Grey has been printed in Canada for several years before the licensing clauses ever became operative, because we believe in producing any books in Canada that can be produced economically.

By Mr. Chevrier:

Q. Do you think that I differ from that proposition? I do not, I concur with you in that.—A. Ten thousand copies of "Thundering Herd" were printed.

By Dr. McKay:

Q. Were they all published in Canada?—A. No, the plates were brought in. If there were type-setting clauses in the Canadian Act—Zane Grey happened to be a big seller, and might have been set up here. I do not say that it would. But before that printing of Zane Grey in Canada we did not sell nearly as many as we have since we have printed. The first book we did print—

[Mr. F. F. Appleton.]

By Mr. Lewis:

Q. Was it cheaper to get the plates than to set it up yourself?—A. It was a joint arrangement to avoid the necessity of doubling the expense without accomplishing anything.

By Mr. Irving:

Q. There is nobody objecting to bringing these plates in?—A. No, they come in duty free. The first Zane Grey book to be printed was "Mysterious Rider", the second was "To the Last Man", the third "Wanderer of the Wasteland", and the fourth was "Thundering Herd". None of these have been printed in editions of less than 10,000; some have since been reprinted making the total made-in-Canada editions 20,000.

By Mr. McKay:

Q. That is, Canadian editions?—A. Canadian editions. I would like to point out that these licensing clauses apply principally to the American authors and not to the Canadian. If they do not apply to the Canadian authors, no person should worry about it.

By Mr. Chevrier:

Q. Will you make that statement clear?—A. I say that these licensing clauses were designed to apply against the American authors—the United States authors.

Q. How often did you apply them to the American authors?—A. How often?

Q. Yes?—A. We did not need to apply them for the simple reason that the licensing clauses are in the Act, and owners of copyrights are very eager to obtain copyright protection in this country just as in the United States, and if the book, is marketable here in large enough quantities, in view of the licensing clauses, they are quite ready to sell us the Canadian rights without applying for a license. The licensing clause is a "big stick", as you have described it, and for this very reason. We give copyright in Canada without any regulations of any kind. Our Canadian authors go to the United States and they are on exactly the same basis as the American authors; when they submit a book to the American publishers they are standing in exactly the same position as the American author submitting a book. The American authors have the same right in Canada as the Canadian authors, therefore the Canadian author is not handicapped as against the American author in dealing with the New York publishers. As a matter of fact, the New York publishers want to have the Canadian market for the reason that they do not want to gamble on an edition any more than the Canadian publishers, and if they see an order for 2,000 copies coming from Canada they have their manufacturing costs and make a little profit besides. I would like to stress the point that the Canadian author deals in the United States on exactly the same basis as the American author. On the other hand, the American author deals in Canada on a totally different basis than the Canadian author does in the United States. He does not have to set the type; he gets all copyright protection until such time as his book is sufficiently saleable in Canada to print a Canadian edition.

If there are no other questions, gentlemen, I will proceed with my remarks.

Some days ago, following instructions from the members of the Publishers Section of the Board of Trade of Toronto, I, as Vice Chairman, addressed a letter containing the text of a resolution passed by our members to the Hon. Mr. Low, copies of which were sent to each member of this Committee. I explain that because all members of this Committee have a copy of that letter over my signature. Our Chairman, Mr. Watson, happens to be in England at the present time. Since that time, in view of the consideration being given by this Committee, we have had further discussion by our members with the result that Mr. George Kelley will present the case of the majority of the members to you.

[Mr. F. F. Appleton.]

I, therefore, am not speaking for the publishers' section as a whole but as one of those in the minority, who are perhaps more concerned with manufacturing in Canada and therefore opposed to certain sections of Bill 2 which would discourage Canadian manufacturing, and since the subject of Copyright is being discussed, believe that certain minor revisions should be made in the present Act. Section 5 of Bill 2 seriously affects the Canadian publishing industry and all those engaged in it, for it removes all encouragement for Canadian manufacturing. The explanatory note facing page 3 says: "In order to escape the evils of these licensing clauses, Canadian authors are now compelled to print two editions of their work, when one single edition should be sufficient; to pay double the price for producing their work and thus double the price of the book." The most evident part of this explanation is that the one edition will not be printed in Canada, and it is hardly necessary to add that it will be printed in the United States. That viewpoint has already been expressed. It appears to be the sole desire of the sponsors of this bill that any author subject to the licensing clauses may obtain full copyright in Canada by complying with United States copyright regulations regardless of whether or not it is for the good of Canada. That is the whole desire of the repeal of the license clause, that a Canadian author can go over there and obtain full copyright privileges by printing one edition there; they obtain their copyright regardless of whether or not they have it in Canada. These licensing clauses were inserted in the present Act to enable Canadian and United States authors to do this whenever their work was not sold in sufficient quantities in Canada to justify the printing of the Canadian editions economically. In other words, these licensing clauses do not operate in any case to harm any author or publisher by putting either to a useless expense of printing a work in Canada if it is not economically advisable to do so. The licensing clauses do say, however, that whenever a work sells in sufficiently large quantities in Canada that it should be made in Canada. Is this too much to ask in return for copyright protection by the Canadian people, their government, their courts and their Customs? That is illustrated in Zane Grey. When sold in sufficiently large quantities it should be made here. We are making our living in this country, why not have our country get a little of the production? This explanatory note is misleading, when it refers to Canadian authors being compelled to print two editions—it is the publisher who invariably pays for the manufacturing regardless of where the book is made. It is misleading too in the statement that it costs the author double the price thus doubling the price of the book—for I do not know of a single instance where an original Canadian edition of the work of a Canadian author retails for a higher price in Canada than in the United States, although I can quote instances where the Canadian price is lower. I would like this Committee to ask whoever is responsible for these statements in this explanatory note, to substantiate their statements, and incidentally ask them how many authors pay the cost of manufacturing their works. That statement is used as an argument for the repeal of the licensing clauses. If the licensing clauses, which were inserted in the present Act as a substitute for the compulsory manufacturing clauses in the previous Act, are now repealed, it simply means that the bulk of the manufacturing of books sold in Canada will be done in foreign countries where costs are lower and since the United States is the nearest producing country, we will help to increase their volume of manufacturing at the expense of our own, at the expense of all those products and all those engaged in manufacturing the products that enter into the manufacture of a book—at the expense too of a decreased volume of business and increased overhead for our Canadian printers at a time when the whole Dominion needs increased volume and decreased overhead. Will this be in the interest of Canada, and will this be productive of that prosperity for which we are all interdependent on each other? What kind of a Canadian publishing industry

can we hope to develop in this country when English and American publishers can obtain copyright in this country on the works of Canadian or United States authors without complying with any restrictions of any kind? Canada is a hyphen between Great Britain and the United States and Canadian publishers have to compete with the producers in each of these countries, who may sell direct to the Canadian trade at no other expense than mail advertising or salesman's travelling expense. Publishers in Great Britain and the United States are now protected in a way that insures manufacture in their own country. The publisher acquires the copyright and that, as surely as the American, either enables him to copyright in his own name or publish under the terms of the copyright. It gives a foreigner the copyright in Canada for fifty years after the death of the author.

By Mr. Chevrier:

Q. Is a British subject a foreigner?—A. No. I am speaking of Canadian and American authors. The British author does not need to manufacture here. He has a manufacturing clause of his own under the Berne Convention. Anyone familiar with the Berne Convention knows that no manufacturing clause is necessary. A Chinaman, if he wants to print an English edition; and does not go to Roumania or Bulgaria, he goes to England.

Q. And a Canadian subject cannot do that?—A. Certainly; he has the copyright of his own works.

Q. He is not protected in Canada unless he prints in Canada?—A. He is absolutely protected until such time as his work is sold in large enough quantities—

Q. You know better than that. It is not the amount of sales that makes the principle right.—A. It does in the United States whether it is so or not.

Q. I am speaking of Canada.—A. We are right next door to the United States.

The CHAIRMAN: I think we will get along quicker if we allow Mr. Appleton to proceed with his statement.

The WITNESS: The licensee does not obtain it for the term of the copyright; he acquires it for five years, after which time all rights revert to the author.

By Mr. Chevrier:

Q. You can mess it for five years and then hand him back the rags out of it?—A. If a book will continue to sell—the Copyright Act is based on the book having a value after the author's death. Canada is the hyphen between Great Britain and the United States—

Q. Do you propose that it remain that way?—A. As a hyphen?

Q. Yes?—A. We cannot help ourselves. We are located between the two largest producing English-speaking countries in the world. We cannot help being there, but we can help our own position, following their methods to try and improve our own conditions. We have to compete with the producers in each of these countries who may sell direct to the Canadian trade at no other expense than mailing out advertising or salesman's travelling expenses. Publishers in Great Britain and the United States are now protected in a way that insures manufacture in their own country; the United States by their own Copyright Act and Great Britain by the Berne Convention, in which boundaries and their own language give them these regulations. We are speaking of Bill 2 now, but I have an objection to clause 15 which will be voiced by Captain Haydon. I will not take up any time of this Committee except to support what Captain Haydon will say. There is one further point that deserves your consideration, and I would like to propose that this Committee amend section 11 of the present Act by striking out the proviso to 11 (2).

[Mr. F. F. Appleton.]

Q. What is the section?—A. 11 (2), that in the event of an author disposing of his work outright—

Q. You mean section 11 (2) of the Act or of the Bill?—A. Of the Bill itself. In the event of an author selling his work outright, capitalizing it,—capitalizing the value of the copyright—that sale should not be recognized as another agreement. Why should this section make flesh of the author and fish of the publisher by providing that when the publisher capitalizes the value of any copyright and buys it outright from the author that his right should be limited under this Act? In other words, the publisher merely buys the lease; he buys a copyright and pays for it, but since he does not get the full benefit of the Copyright Act, he treats it as a lease and the author receives that much smaller amount, and the author has no control over the sales of his works. This Bill has been designed to give the author control. This Act says he should not sell for value direct—

Q. Will you move an amendment to that, or leave it to the Committee?—A. Yes. By striking out this proviso, every copyright has a greater value. There are certain kinds of work that you do buy outright.

That is the extent of my remarks. If there are any members who would like to ask any questions, I would be glad to answer them.

By Mr. Hocken:

Q. Mr. Appleton, in this publishers' section of the Board of Trade, how many manufacturers are there of the twelve?—A. I should say there are about three who do very much manufacturing.

Q. And the others are importers?—A. Representatives of publishers in Great Britain and the United States, the same as those who manufacture are.

Q. But they do not do any manufacturing?—A. Not any more than they have to.

Mr. CHEVRIER: I have no further questions to ask.

Witness retired.

STEPHEN BUTLER LEACOCK, called and sworn.

Mr. CHEVRIER: I know who Professor Leacock is; I am not going to ask any questions as to who he is.

Mr. LEACOCK: Mr. Chairman, this is the first time I have appeared before this committee or a committee of this kind; I am ignorant of your procedure. May I ask whether I am expected now to make a statement without any questioning, or whether I am here to be questioned after the fashion of witnesses in other places?

The CHAIRMAN: We are prepared to hear your statement, Mr. Leacock, and if any members wish to ask questions, they will do so after.

Mr. LEACOCK: My statement, gentlemen, will be very brief. I wish first of all to say that I appear here simply to represent my own views. I do not come representing my university or any of the different bodies to which I belong and I am very happy to say that I do not come here to represent my own pecuniary interests; because, as I understand it, I have the good fortune to be outside of the very unjust legislation of this country.

By Mr. McKay:

Q. Are you not domiciled in Canada?—A. I am English born.

Q. But domiciled in Canada?—A. I am.

By Mr. Hocken:

Q. Are you a Canadian citizen?—A. I gather from my reading of the Act, and no one can dispute it, because I understand there has been no judicial

[Mr. F. F. Appleton.]

decision of what it means—that I come outside the Act personally; that I could claim I would be on the footing of a British author under this Act.

Q. Do you vote in this country?—A. I do. Even then I should have no objection to representing my own pecuniary interests, and my views, if anything, would be very much sharpened on the subject, that's all. What I want to say is, I am afraid I am absolutely unable to sympathize with the point of view of those who seem to think that the production of literature is principally a manufacturing business; those who think to make the literature of a country you have to weigh it out in so many tons and pounds, and look on it as a kind of manufactured product.

Q. Have you met any such persons as that?—A. Yes, I have. I do not want to throw bricks, but I am afraid I have. I am afraid I have been listening to one this morning, if it is not rude for me to say so. That is to say, from my point of view when an author makes up a poem, or composes a play, or writes a story he has got something that is absolutely his own, if he likes he need never put it on paper. His idea is his own; the result is his own property. And as I understand, gentlemen, the whole meaning of copyright law here and anywhere, a copyright law is a law which has the fundamental idea of recognizing the property of the author in the thing that he creates. Now, I do not want to speak about the details of Canadian copyright. I have not the knowledge of the subject for that, but I want to speak on the principle of compulsory printing. As I understand the contentions that now surround our Copyright Act, the principal question at issue is whether an author in this country, a Canadian, should be compelled as a condition of his copyright, to have his work printed in Canada. I claim, sir, that any such compulsion is absolutely unjust; that it is contrary to the most fundamental principles of equity, that it is as sharp an attack on the principle of individual property as if you come and took away my house. If you take away my copyright or if you so restrict it as to make it less valuable to me, you are stealing from me, and I will not listen to the idea that you are thereby helping to build up the printing trade; as if there was any comparison between the protection of literature and the purely mechanical material in the printing trade of a country. I am afraid there are some people in this country who would measure out the greatness of Shakespeare according to the number of copies of his works, and the number of employees who would set the type. I say, to my mind, there is absolutely no comparison between these things. Copyright is created to protect the author; to stimulate authorship, to make a national recognition of the value of literature; that is the fundamental basis of copyright, and you are violating it here.

Now, I do not care what the United States does. The worst argument that can be brought forward in our country is to say that they do this or that in the United States. If you adopt their copyright laws, are you going to adopt their criminal laws? Are you going to adopt every institution they have? That is absolutely no argument at all, to say the United States does it. But I will tell you this, that if the United States does have compulsory printing, they have it under conditions absolutely different from our own. I know of what I speak. Every book that I write is printed over in England and printed also in the United States. If they abolished their law to-morrow, those books would still be printed in the United States. They are printed there because the American market is so large that it pays to print them; it is better business to print in the United States than to import. If a book has a sale too small to guarantee the printing in the United States, then it is too small to steal and the copyright is safe anyway. But what we are proposing to do and what we have already done by the Acts on our books is to over-stimulate a smaller market, try to make out by law that our market shall be bigger than it is, to force people to print. You can only get as the result of that—you are bound to get—an increase in the cost of books to the Canadian public; a diminution

of the profits of the author, the legitimate profits of the author, in favour of the publishing trade that you build up. In other words, you are going to kill the substance for the sake of the shadow; you are going to kill the reality of the thing by a kind of legislation that instead of stimulating authorship will take away a certain amount of money from the authors and from the public and put it into the pockets of the Canadian printers. Now, sir, I know about the prices of books; it is my life work in a college to know, and I can tell you this, that one of the worst things rising prices has brought to our country is the high cost of books. It lies like a burden on our college student; it lies like a burden on every reader of books, and most of all on the poorer people who are fond of books, who would like to buy them but are gradually being driven out of that market by the terrible cost of the printed book. We ought, sir, rather to try and stimulate legislation which will bring down the cost of books, instead of having a law in Canada which will have at least a very dangerous tendency to heighten the cost of books. Let me repeat in conclusion that the main thing I wish to impress is the principle of justice to the property of the author. Personally, I do not care one hoot whether the Parliament of Canada does this or does that; I am personally independent of anything you may do, but I would never, never submit that any printer in Canada should ever take me by the neck under this licensing clause. I will tell you this, that if you jam this kind of legislation through and hold it, you are going to set up an antagonism between the Canadian author and the printer. Printers are rich; authors are poor; one represents the large corporate interests, the others nothing but themselves, but the Canadian authors have with them the intellectual interests of the country; are the powers of our universities, and if the printers of Canada insist on that we will have to look upon the printer as our leading enemy. We will find ways to make that enmity felt where it will smart with the only kind of sting that that kind of person can understand. We will not be put down. If you carry such a law as this, I tell you the consequences shall hurt most those who have put it on the statute books. I have finished.

Q. Do you understand any difference between a printer and a publisher?

—A. I do not know, technically; I have always understood some publishers print and some do not.

Q. A printer is not always a publisher?—A. Not necessarily.

By Mr. Lewis:

Q. Mr. Leacock, do you consider it stealing if you make a patent owner manufacture his patent goods in Canada, under the Patent Act, for instance? I am not speaking in regard to books now, but in regard to some article patented; do you call that stealing?—A. I admit the question goes to the root of the matter. The Patent Act covers such a very wide field. Some things in it can be represented as genuine and real inventions of the greatest use to humanity. There, if possible, I would give a man full and complete ownership. But others are devices of such a minor and relatively easy character so closely connected that manufacture would come in. I think it is a pity that patent laws cannot distinguish between those which in and of themselves are irrevocably the property of the man who invented them and the smaller more trivial things. In other words, I would not be prepared to say that there is a full parallel between a patent law and a copyright law.

Q. It is the product of a man's brain, just the same.—A. I think it is a property which, from its nature, might be more limited, because in many cases a patent represents only the smallest change of what other men have done, but a poem for instance, is all new.

[Mr. Stephen B. Leacock.]

Q. But any improvement cannot be patented until the old patent runs out.
—A. No.

The CHAIRMAN: Are there no further questions? Thank you, Mr. Leacock.
Witness retired.

The CHAIRMAN: The next witness is Mr. W. F. Harrison.

W. F. HARRISON called and sworn.

By the Chairman:

Q. Will you give your full name?—A. William Frank Harrison.

Q. Will you state whom you are representing on this occasion, Mr. Harrison?—A. Mr. Chairman and Gentlemen of the Committee, as secretary and manager, I am here officially representing and presenting the views of the Canadian National Newspapers and Periodicals Association, a Dominion-wide organization of over 100 periodicals, magazines and farm journals, including in its membership practically 100 per cent of the general magazines, farm journals, and business and technical newspapers of the Dominion.

By Mr. Chevrier:

Q. Are you interested in the books at all?—A. Not except in a general way. I am speaking primarily on behalf of the serial end of it.

Q. But if we were to understand to what extent you are interested in the books, my conduct would be determined now. Are you speaking now?—A. I am speaking now primarily for the magazine end of it, but I am also speaking in a general way on section 5, and I think that will be clear as I go on. I am authorized to say that as a body we are unanimously and strongly opposed to the repeal of what are known as the licensing clause of the present Act as proposed in section 5 of the Bill being considered. Our opposition to the proposed repeal of the licensing clauses is also concurred in by the Canadian Weekly Newspapers Association, another newspaper organization including in its membership 600 different weekly newspapers from all parts of Canada, whose combined circulations total close to one million copies per week. I am going to read and table with the Chairman a letter from this organization in confirmation of that. This is a letter addressed to me showing my authorization for speaking, which I would like to read. It is addressed to me on the letterhead of the Canadian Weekly Newspapers Association, dated March, 7:—

CANADIAN WEEKLY NEWSPAPERS ASSOCIATION

TORONTO, March 7, 1925.

Mr. W. F. HARRISON,
Magazine Publishers Association of Canada,
70 Lombard Street,
Toronto.

Dear Mr. HARRISON,—I shall be glad to have you officially express to the Special Committee appointed by the House of Commons to consider Mr. Chevrier's bill to amend the present Copyright Act the opposition of the Canadian Weekly Newspapers Association to the proposed repeal of the licensing clauses."

Q. The weekly papers—do you include the *Manitoba Free Press* in those?
—A. No, this is an association of small weekly newspapers scattered throughout the country.

[Mr. W. F. Harrison.]

Q. You do not represent the *Winnipeg Free Press* at all?—A. That is a daily paper.

Q. You do not speak for that?—A. I do not speak for the dailies as such at all.

While the present Act has been in force too short a time for the press of the country to have realized the full benefit from it, it is, nevertheless, felt by the members of this Association that these licensing clauses are to the distinct advantage of both publishers and authors and a protection against the copyright domination of U.S. publishers that previously existed.

Our own hope is that the Copyright Committee will recommend to the House that the licensing clauses, as far as serials are concerned anyway, will be left as they now stand.

Yours very truly,

(Sgd.) E. ROY SAYLES,

Manager.

I will table the original later. Between those two organizations—that is, the Canadian National Newspapers and Periodicals Association, with which I am personally connected, and the Canadian Weekly Newspapers Association—they represent a very large and important and influential part of the press of this country. As I said before, they are both unanimously opposed to the repeal of the licensing clauses.

Q. In so far as they affect your magazines and weekly papers?—A. That was stated, of course, in the letter which I read. The reasons for our stand are that these clauses give publishers and Canadian authors some partial protection from the copyright domination of this country by United States publishers. That existed previous to the Act. Before these clauses were in force the United States publisher, taking a dog in the manger attitude, invariably insisted in his dealings with others, that they throw in the Canadian rights without payment. I am speaking of practice and not theory, and because the author wanted to sell to the United States publisher who, of course, individually represented a larger market, and because there was no adequate copyright law to protect him, the author had to meekly give way to the United States publisher and throw in the Canadian rights and forego the revenue which came from the sale of those rights to a separate Canadian publisher, and in so doing deprived Canadian publishers of much first-class material that we wanted to get and that the author himself, I believe, always wanted to sell us if he could. That was what happened before the present Act, and again I say I am speaking of practice and not theory, because it is easy to theorize about this Copyright Act to a point of utter distraction, and it is very important to get down to actual practice.

Now, under the licensing clauses, what happens? No longer can the United States publisher demand that the author throw in the Canadian rights, unless he is going to print here, or arrange for the printing here. No longer can he force the author to give Canadian rights and so, indirectly force the Canadian public which may be interested in the author to read his works in an American magazine, which is what he was able to do previously. We do not want to have this very proper right of protection cancelled. Although the Act has been in force for only a little over a year, Canadian periodical publishers have been able to secure, by amicable arrangement, the Canadian rights of much first-class material previously withheld from us by the United States publisher, to both our own and the author's advantage. Naturally, as I said before, the author would prefer to sell to two markets, even if the second

[Mr. W. F. Harrison.]

one may not be as big as the first, than he would sell only one. All the material which has been secured has been secured by virtue of the licensing clauses. I am sorry to have to confess to you this morning that we import into Canada six magazines for every one that we print here. Twenty million copies of United States magazines were imported into Canada last year. This domination is not a little due to the fact that the United States magazines publishers were able, before the licensing clauses existed, to get first-class material, the best material available, for themselves, and concurrently withhold it from us, because that is what they did; they adopted a delightful dog in the manger attitude. Since January of last year, however, conditions have been improved and in proof of this I might quote the case of one magazine that has been able to secure the Canadian rights for some twenty-eight first rate stories and articles, by thirteen different authors, for simultaneous publication in Canada with the U.S. publication rights owner. I can quote the case of another magazine which has secured nine first-class articles and features by five different authors for simultaneous publication here and in the United States. In both cases the Canadian publisher had been previously unable to get the works of the authors in question, and although in none of these cases were licenses invoked or applied for, merely the fact that we were able to invoke them if we had been called upon to do so, and because the United States publisher knew that we could, he has been willing to deal with us like the good business man that he is and let us buy the material that we wanted on a proper basis.

The benefit to the authors has been that by virtue of the protection of the licensing clauses, they have been able to sell in the Canadian market separately and get paid for it. The benefit to the Canadian publisher is obvious and is proven in the fact that both the magazines referred to have increased their circulation as a direct consequence of the improvement in their papers, and will announce a guarantee of this increase to their advertisers as soon as they are assured that the licensing clauses will not be interfered with. I would again like to point out to this Committee that this is not theory: this is fact. These licensing clauses are vital as protection for both Canadian author and Canadian publisher against the grab-all policy of the United States publisher.

Q. So far as serials are concerned only.—A. I made that clear. I think I have made myself clear. While the Act is under consideration, however, I would like to suggest an amendment, one slight change, namely that Section 14 of the Act be amended by adding after the word “applies” in the fourth line thereof the words “or announcement of such serial publication is made.”

The point is that, as the Act now operates, time is an essential element of the publishing business, especially as regards magazines and serials, and we would like to speed up the time of notice. I think I am quite safe in saying that the actual number of licenses which would be applied for for serials would be exceedingly few. Of course, I am not a prophet, and I cannot say exactly. One license has been applied for since the Act went into force. The applicant was defeated because the author or the copyright owner has the safeguard of giving just cause or reason, and is given a sufficiency of time to state that reason or why the applicant should not get a license. He is given ample time. No possibility of piracy is possible. He has to show cause or reason why. In the next application for a serial license, the American copyright owner defeated the applicant by selling his rights to another Canadian publication, and, so far as the Act was concerned in a national way, it was operative. It was something of a test case, and I pointed it out to show that we would apply for very few licenses, which is what we said when the Act was originally drafted.

Finally, I would like to say that I know of no cases where any author has suffered any injustice by virtue of the Serial Licensing Clause, or by virtue of the Book Licensing Clauses. Let me emphatically state that we believe these clauses are necessary if the magazine and publishing industry of this country

is to prosper and do anything more than merely be relegated to the position of an anaemic shadow of the publishing industry across the line. We believe, further, that aside altogether from any individual interest that an author may have in the sale of any individual work to any publisher, it is in the interest of authors generally that the publishing industry of this country should be on a prosperous basis and be in a position to compete for their work.

Q. I think we can agree that there is a difference between a book and a serial. They may be in a different situation and practically they are?—A. I think the condition is very different in a way.

Q. If you take the licensing clauses as they operate now, and a Canadian serial writer sells his rights to an American house, he cannot sell his Canadian rights. Is that not right? He cannot trade his Canadian rights unless some bargain is going to be made later on for simultaneous publication?—A. It does not necessarily have to be simultaneous, but practically it is simultaneous.

Q. Would you like to put a magazine on the market in Canada containing an article that has already been printed in the United States, that has been on the market for three weeks?—A. I would not.

Q. If the Act operates in that way when a Canadian serial writer sells to an American publisher, he says "I will sell you my rights to your magazine for \$50." The American says, "I will take it." Then you go to the Canadian writer, and you say, "I will give you \$5.00 for your Canadian rights." He says, "I want \$25." You say, "You had better take \$5, or I will license you." The American publisher will publish that article probably in three weeks, and it takes much longer than that to get a license under the Licensing Clauses of the Act. So, you bargain with him, and you say, "I will give you \$7, or I will license you." You will not give him \$50 for his rights?—A. We will not give the same money for his Canadian rights as he will get for his United States rights.

Q. Because you can license him; you can force him into a bargain. The reason you are willing to make a bargain with him and pay him a small sum is that unless he sells for a very small sum, your licensing provisions which would take about two months to get into operation, would not avail you. So you would rather pay him \$5, and get him into a gentleman's agreement rather than lose the whole thing. But because of the licensing clauses, you will not pay him \$50, which he gets from the American side?—A. The payment of fees for literary work is for the most part based upon circulation and class of publication, and it is not natural that we should pay here for a magazine, say, of ten thousand circulation the same fee, because it is not on a royalty basis, as such. It is not likely that we would pay the same amount of money in bulk as a paper on the other side with a circulation of one hundred thousand would pay for it. That is a very common practice.

By Mr. Hocken:

Q. Mr. Harrison, getting down to practice again—not theories—

Mr. CHEVRIER: Mr. Harrison says he has not left practice at all.

Mr. HOCKEN: I was addressing the witness, Mr. Chairman—

Mr. CHEVRIER: I am just reminding you.

By Mr. Hocken:

Q. Is it not the case that now the Canadian author sells his serial outright as far as it is possible to sell it, to the American publishers?—A. Yes, that is true.

Mr. CHEVRIER: What is the meaning of that?

By Mr. Hocken:

Q. The Canadian publisher who desires to publish a serial deals with the American publisher and not with the Canadian author?—A. That is sometimes the case.

Mr. CHEVRIER: And then the Canadian author gets nothing from the Canadian publisher.

By Mr. Hocken:

Q. The American publisher buys the copyright in the United States and buys the copyright in Canada subject to the licensing clause?—A. A divergence of practice comes in there.

Mr. CHEVRIER: Where does the author come in?

Mr. HOCKEN: If my hon. friend will just give me a chance; I did not interrupt him.

By Mr. Hocken:

Q. The American publisher buys the full rights subject to the Licensing Clauses, and it is the American publisher whom you have to deal with instead of the Canadian author?—A. The American publisher has always been our problem, and not the author at any point.

By Mr. Chevrier:

Q. And why not the author? Have you never considered him?—A. No, because the author would like to sell to us if he could. You would naturally, as I said before, like to sell to two markets. It is very obvious, even though the second market was not actually itself as big as the original one. As a matter of fact, I will ask the Committee if they will hear Mr. McKenzie for a moment or two on some actual practice points. He is here from Toronto. I believe it can be shown generally that the actual amount of fees paid by the Canadian publishers is greater pro rata of circulation than that paid by the United States publishers.

Q. What was your circulation before the coming into force of this Act? What was your circulation on the 31st of December, 1923? What was the circulation of your magazine?—A. The gross circulation?

Q. Give me any one?—A. I will take a case in point. I will give you one case. There was the case of the Canadian Home Journal.

Q. What was it then?—A. It was 50,000.

Q. What is it now?—A. It is now running to 65,000.

Q. The result of what?—A. As a result of the improvement of the material in the paper. Other factors, of course, also entered into it.

Q. Due to what?—A. Due to the improvement of the material in the paper itself.

Q. Not due to the licensing clauses?—A. That improved material was by virtue of the licensing clauses.

Q. In what way? You say that the nature of the material has been heightened by the operation of the licensing clauses? What do you mean by "The nature of the material"?—A. I mean that much good material previously withheld from Canadian publishers was securable by amicable arrangement which had the strength of the licensing clauses back of it. It made the United States publishers relinquish to the Canadian publishers material which we were previously unable to get.

Q. That they purchased in Canada? They purchased that good material in Canada before the licensing clauses were in operation, and yet you could not get that material in Canada before the licensing clauses?—A. We could not get much material which we wanted because—

Q. I do not want to argue with you all over the board, but you have made the statement that material which you are getting now is much better material. Is that due to the effect of the licensing clauses?—A. Absolutely.

Q. In what way?—A. I think I had better go over my whole story again.

[Mr. W. F. Harrison.]

Q. We will leave it at that.—A. You know the point, Mr. Chevrier, as well as I do. The licensing clauses forced the United States publishers to relinquish material which they previously had withheld from us.

Q. That is right. But the author has to sell you to-day at a very, very, very small price. A. He has not to sell us at any smaller price—

Q. Because if he does not, you will license him?—A. Because the licensing price which is paid is subject to proper adjudication by the department.

Q. But you are prepared to pay him because you know you cannot put that into operation inside of three months?—A. We will pay him a fair price. The practice is such now that we pay a better price per thousand of circulation than the average United States magazine.

Q. I would like to have you show us the price you paid without a bargain according to circulation?—A. I will ask Mr. McKenzie to give specific details, if I may.

The witness retired.

J. VERNON MCKENZIE called and sworn.

By the Chairman:

Q. Mr. McKenzie, will you tell us whom you represent on this examination?—A. I represent the Canadian National Newspaper and Periodical Association, the same association which Mr. Harrison represents, I also represent the MacLean Publishing Company, and particularly MacLean's Magazine.

By Mr. Chevrier:

Q. Do you represent any book publishers?—A. I am speaking entirely from the magazine end of it. By the way, when I spoke of "15 minutes" I meant 15 uninterrupted minutes. If I am to be interrupted it will take me longer than that.

Mr. CHEVRIER: If you state that you represent no book concern, I shall not interrupt you.

The WITNESS: Mr. Chairman and Gentlemen: I want to consider the practical value of the licensing clauses from three angles; first, the viewpoint of the Canadian public; secondly, the viewpoint of the Canadian periodical publishers; and thirdly, the viewpoint of the Canadian authors. I wish to discuss, and I think demonstrate how each of these three groups has profited under the licensing clauses as they stand to-day in the present Copyright Act. I will take up first the Canadian public. (a) The quality and quantity of fiction published in Canadian periodicals has already been considerably augmented for Canadian readers. One periodical alone has published—that which I represent—during the time that the licensing clauses have been in force—that is, during nine months of this 14 months period—28 short stories, novelettes and serials, which could not, in the majority of cases, have been procured except for the licensing clauses. The reason I say, "in the majority of cases" is that in some cases it is impossible to say what would have been done in theory. This is practice. (b) Certain material of outstanding international value has been made available for the Canadian readers in Canadian publications which previously Canadian readers would have had to read in foreign periodicals. An example of this is seven short stories by Rudyard Kipling which, if it had not been for the licensing clauses would not have appeared in any Canadian magazine. As many of the members of this Committee of the House of Commons will remember some 15 years ago this master short story writer made a tour of the Dominion of Canada and his comments thereon, disseminated by a well-known syndicate later, appeared in various alien publications, but in no Canadian publication. At that time a great deal of newspaper comment was made of the fact that Kipling's story of his trip through Canada should not be made

[Mr. W. F. Harrison.]

available—and could not be made available for Canadian readers—in their own media. (c) Canadian readers are now enabled, owing to the licensing clauses, to get short stories and other material by Canadian writers in their own magazines, instead of in alien magazines. It is naturally of interest to all classes of the community and to the writers and readers of periodicals, to build up Canadian publications. I think that may be taken for granted.

My second point is in regard to the benefit of these clauses as they have operated, particularly to Canadian periodicals. (a) Owing to the licensing clauses, Canadian magazines and other media have been able to obtain better fiction by English, United States and Canadian writers than previously.

(b) Canadian magazines have obtained the work of Canadian writers previously published exclusively, or chiefly, in the United States. At this point I would like to inform the Committee that in my experience the Canadian writers previous to the enactment of these clauses made every endeavour to co-operate with Canadian publishers. Through friendly interference on many occasions, such men as Higgins, Leacock, Springer and others have enabled the Canadian publications to publish Canadian material, but they could never have insisted upon it unless these licensing clauses were inserted and the American editors have not had such powerful sway in these questions. (c) The material of a certain number of outstanding United States writers has been made available for Canadian publication for the first time. This opportunity has, up to the present time, been taken advantage of sparingly, and will probably continue in that way, as Canadian magazines will continue to give first consideration to Canadian writers, so long as they are appealing to a specifically Canadian market. But a certain amount of international competition is desirable. For one thing, it will stimulate Canadian writers to put forth every effort to increase the quality of their product, and secondly, it will tend to provide material of a kind which will enable Canadian periodicals to compete on more or less an even basis with competitors with vastly larger circulation, so that these Canadian media will not have to appeal on a sympathy basis to their Canadian public, but can also appeal on a straight quality basis. Canadian readers should be given in their Canadian periodicals value for their money. The best material published anywhere should be available and selected discriminatingly, although the work of Canadian workers does greatly predominate and will continue to do so.

Now, we will take it from the standpoint of Canadian writers. There are now two markets for Canadian writers where there was but one chief market before—or rather, three markets where there were but two before. Previously, several Canadian writers were selling in the United States and in England, but owing to the then prevailing copyright laws they were prevented from selling in Canada. Now three markets have been opened up, and taken advantage of by several writers who find ready acceptance of their work in Canada, the United States and England, for more or less simultaneous publication.

I know of one writer—some Canadian authors say, "What a small price you pay; what is the use of bothering with that?" The Canadian price is very frequently equal to or slightly ahead of the price paid in England. I know of one specific example of a Canadian writer who got \$1,650 for a story in the United States, \$92.50 in England, and \$100 in Canada, all of which except the agent's commission, went to the Canadian author.

Canadian authors are really freer now, under the licensing clauses, than before, as they cannot be placed in a sort of literary peonage by United States editors. Previously, editors in the United States could say to Canadian writers in effect, "Now, I want all rights, so if you send me your material you must let me have Canadian rights as well as U.S. rights." Up until January 21, 1924, the term "American rights" was held, as a matter of practice, to include both U.S. and Canada. Naturally, live United States editors were keen to buy all

the rights they could, at their price. I have had considerable experience, over a number of years, in endeavouring to buy Canadian rights from writers, or their agents, only to be told that "All American rights" had been sold, and therefore Canadian rights were impossible. Now, a Canadian writer may go to any editor in the United States and say in effect: "It is impossible for me to sell you Canadian rights, because of our new copyright law. I'll be very glad to sell you the U.S. rights, but my Canadian rights are reserved. We naturally want our material to appear in a Canadian periodical as well as in the international markets of the world, and I can see that you get approximately simultaneous publication, and that is all that you should want." Thus the Canadian writer can get two markets where he had but one before, and, two prices where there was but one before.

Payment has been actually made, by one Canadian periodical alone, to more than a dozen Canadian authors because of the existence of the licensing clauses, for material which, in all probability, could not have been procured for Canadian publication otherwise. I am willing to give this information confidentially to the Chairman, or to any other member of this committee, but naturally am not inclined to make a public or semi-public statement, giving these facts. The presence of the licensing clauses in the Act, indirectly, has raised the rate to Canadian authors, because U.S. writers expect more or demand higher remuneration, and are gradually raising the all-around level of prices. This was a situation, and a tendency, pointed out to me by a former President of the Canadian Authors' Association, R. J. C. Stead, in discussing some of these facts with him recently. He believes—and I also—that this situation will work out to the advantage of all concerned, including that of the Canadian writer.

I venture to make some prognostications as to future development under the licensing clauses in the present Act. I believe that Canadian periodicals must inevitably grow in quality and in number, as long as these clauses remain in the Act, or some legislation giving similar effect is maintained. It is perhaps natural that there has not been much progress along this line yet, as these clauses have not been in effect fifteen months, and it was several months after they came into effect before advantage could be taken of them. I believe the Canadian public would not have to subsist entirely, or almost entirely, as is the case at present, on alien periodicals. If you think this statement is an exaggeration as conditions are at the present time, one glance at any news-stand in this country will convince you of the truth of my statements. We took some photographs some time ago of some typical news-stands. On one, we found sixty-seven periodicals; sixty-four from the United States, two from Canada, and the sixty-seventh was *La Vie Parisienne*.

By Mr. Chevrier:

Q. Where was that?—A. In Toronto. I believe that Canadian writers will have a steadily growing Canadian market,—and an increasingly remunerative one, owing to these clauses in the present Act. We might, for purposes of analogy, call Canada a minor league. If the scope of this minor league is gradually broadened, Canadian writers will have opportunity for increased market in their own country, and it is only by seeing their material published and having opportunities to secure ready acceptance for their wares, that the members of this minor league can grow, and finally graduate into the major. Now, it is chiefly the hardiest and most brilliant at the outset who are enabled to stand the gaff and make international successes. If there were a number of Canadian magazines where they might be published, almost from the outset, or as soon as they show certain moderate merit, then they would be encouraged to go on and on, instead of having their genius nipped in the bud. Under the licensing clauses markets will be built up which will give them adequate oppor-

[Mr. J. Vernon McKenzie.]

tunity to develop within their own country, and then broaden out into international markets. Perhaps I might be permitted a word or two to show how all this worked out, and is working out, under the licensing clauses, but not by being actually licensed. I can speak of this, because there is a differentiation, and an important one, one with which I have had a great deal to do in a business way. Mr. Burpee spoke of this being merely an academic question because the licensing clauses had not been taken advantage of. They have been taken advantage of. I have taken advantage of them, and yet I have applied for no license. We will be able to accomplish the same thing in a different way. For example, this has been accomplished by joint agreement between editors in Canada, authors in or out of Canada, literary agents and United States editors. It is incorrect to assume that the Canadian editor has gone direct to the United States publisher and neglected the Canadian author. In at least ninety per cent of the cases that I have come into personal contact with, the author has been consulted from the start. Usually, the literary agents and United States editors have accepted the fact that the law is there and should be made operative. They have shown very little evidence of a desire to throw obstacles in the way of its enforcement. Their attitude may be epitomized in this way: "Let us accept the fact. Let us play the game. We'll be glad to arrange with you for as close to simultaneous publication as is mechanically possible."

I could instance quite a large number of publications in the United States—fifteen or sixteen in all—which have thus evidenced the spirit of fair-play and co-operation, but perhaps it might be inadvisable to state these in detail here and now. But I shall be glad to give them in confidence to the Chairman or to the members of this Committee. The members of the Committee may recall how, a few weeks ago, the announcement was made that a young Winnipeg girl, Martha Ostenso, had won a literary prize of \$13,500 for a book called "Wild Geese," and which was accepted for publication, serially, in the United States by the Pictorial Review; for book publication by Dodd Meade; for a cinema play by the Famous Players organization and by several other markets. It is probably the largest literary prize ever won by a Canadian, and yet in all the various rights of that prize and in the arrangements for the publication of that book, the Canadian rights did not figure at all, despite the fact that it was a book about life in the Canadian province of Manitoba, written by a Canadian girl, until recently a member of the staff of a Canadian newspaper, and a resident in a Canadian city. I personally went to the editor of the Pictorial Review and said to him, "How about the Canadian rights, I would like to serialize that story in Canada." His reply was, "Oh, don't be silly, I have bought all the American rights." I said, "You have not studied our law." He then looked into the question and immediately took a different attitude toward Canadian publication. He said, "I see that the law is different from what I was advised it was," and he added that he would be glad to dicker with me. He has now made a proposition which will enable us to publish this story in Canada if certain details can be worked out. I do not wish to be quoted as promising this; I merely mention it to show the disposition of the United States editor to "play the game" when he understood our copyright law.

Q. Was that with the Pictorial Review?—A. The Pictorial Review. It may not appear in Canada for some months.

Q. You will get it into some Canadian magazine?—A. He has made a proposition which will enable us to do that, but there are certain details involved which might not make it in our interest to accept the proposition.

Q. Would it not be in the interest of the girl to have the serial published in Canada?—A. I think so.

Q. But if it is not in your interests to do so, she will not get any benefit?—A. She can get it under the licensing clauses. In that case, I believe,—I speak

subject to correction,—the whole thing was sold outright for the \$13,500, the amount of the prize, and there is no further payment, so far as they are concerned. It is an outright sale. If there is any publisher here who knows better, I am subject to correction. I would like to say in conclusion that I represent a publication—McLean's Magazine—which, during the five years I have been editor-in-chief, has expended in the neighbourhood of \$250,000 on editorial material alone. The great bulk of that has been expended in this country. I want to emphasize the fact that I firmly believe the interests of Canadian authors and of Canadian editors and publishers are one. Many animadversions were made this morning against the Canadian printers. I am speaking specifically as the editor of a Canadian magazine and for a Canadian publishing house, and I say that each one can mature and prosper only as the other matures and prospers. There may be occasions when each must perhaps sacrifice an immediate financial advantage for the greater good, for the national good, or for an ultimate gain, but this is true in many other walks of life. A disposition to work together will accomplish much more than continual evidence of friction. It has been my good fortune to work with scores of Canadian writers during the past five or six years and I may say that I have found in the main every evidence of a willing and interested co-operation and frequently examples of unusual goodwill and sacrifice. The licensing clauses have been on our Statute Books for barely a year. It took five months of that time before they could be capitalized. This Act has shown unusual advantages, and no practical disadvantages. Canadian publishers, as are perhaps other Canadian industries, are under many natural and artificial handicaps. The licensing clauses remove one such handicap from periodical publishers. Magazine after magazine in Canada has faded away. I know of one prominent member of the Canadian Authors Association, the President of one of its provincial branches, who sadly and wistfully says that he is "the ex-editor of four now defunct Canadian magazines." Speaking for my own periodical—or rather the one I represent—I do not mind candidly admitting that two or three things happening to hamper us could practically wreck us. The removal of the licensing clause would be one of them. It would be a body blow. It would be a retrogressive step. There is no use trying to make a copyright law designed for Europe function satisfactorily under Canadian conditions. We are uniquely situated because of our geographical juxtaposition to the United States. We speak the same language, almost, and these factors must be recognized. Finally, I want to lay down two assertions, and I would like to have some person contradict me, because it is within my knowledge, that no Canadian writer has suffered in any way under the present licensing clauses, and no Canadian writer will suffer in any way in the future under these licensing clauses. That is my case, gentlemen. I will be glad to answer any questions I can.

The CHAIRMAN: Has any one any questions to ask?

By Mr. Lewis:

Q. A former witness said that the circulation of a certain magazine was increased. Have you found evidence of that, in your experience, on account of these clauses?—A. It is impossible to say that one factor increases the circulation, but we have found that the increased quality of material in our periodical in the past twelve months has made it easier to get renewal subscriptions, and new subscriptions, and that has, to a certain extent, increased our circulation, but to what extent this circulation depends on any certain effort of ours of course, it is impossible to say. It may not be entirely due to any one thing. There are other things that enter into it. Some of the things would be the cost of paper—and if you can get it at the same cost you get the benefit—

[Mr. Vernon McKenzie.]

By Mr. Chevrier:

Q. In this case you would have it at less cost?—A. I am speaking of operating at less cost. We have paid more per story than ever before in our history.

Q. Where are your lower costs apparent?—A. In canvassing, a cheaper method of sending out applications for renewals—

By Mr. Lewis:

Q. Would you say that as a result of these clauses the material has improved, and is it easier to get?—A. Absolutely. I would like to answer those questions separately. You ask if it is easier to get. It is costing us more per story to-day than it ever did before, but it has enabled us to get better material, and we have thousand or hundreds—I will say hundreds, because I am under oath,—of letters to show this.

Q. You would consider that the removal of these clauses would be detrimental to the Canadian public?—A. To the Canadian public, and the Canadian periodical publishers, and the Canadian authors. I made that one of my three points and I want to make that one of my clearest points. I am sorry if I did not “get it across,” but it will no doubt appear in the transcript of the evidence.

Q. These magazines of which you spoke became defunct before these clauses came in?—A. Yes, all of those, but there is no guarantee that there will not be others.

Q. If the clauses had been in—A. It would be a stimulus and advantage to all three parties connected with this matter.

Q. We have heard evidence that no Canadian writer has suffered, and you say they will not suffer?—A. I can only prophesy as a personal opinion, but I can speak of my experiences in the past as actual facts. I have asked representatives of the other side of the question time and time again—I can name a dozen of them—if any Canadian writer has suffered. I have asked their strongest proponent, and he could not answer it or give me a single instance.

Witness retired.

The CHAIRMAN: I think before we adjourn we had better put this motion, that we ask the House for permission to print our proceedings and evidence so that it can be coupled with the report this afternoon.

Mr. LEWIS: I will move that motion.

Mr. CHEVRIER: I will second it.

Motion agreed to.

Discussion followed.

Moved by Mr. Lewis, seconded by Mr. Chevrier, that 300 copies of the day's proceedings and evidence be printed.

Motion agreed to.

The Committee on motion of Mr. McKay then adjourned until to-morrow at 10 o'clock a.m.

WEDNESDAY, March 11, 1925.

The Special Committee appointed to consider Bill No. 2, an Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 10 o'clock, a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Irvine, Ladner, Lewis, MacKay, Prévost and Rinfret.

In attendance:—Mr. George F. O'Halloran, Commissioner of Patents and Copyrights.

The CHAIRMAN: I think we will dispense this morning with the reading of any communications or minutes, and proceed with the hearing of evidence from those gentlemen who are here from a distance.

EDWARD BECK called and sworn.

WITNESS: Mr. Chairman and Gentlemen, my story will be a very brief one. I represent the Canadian Pulp and Paper Association which comprises within its membership perhaps 90 per cent of the companies engaged in the production of pulp and paper in Canada. I come here particularly to represent the book and writing section of our association which is particularly concerned in producing the kind of paper used in books, periodicals, magazines, and so forth. There are, I think, about eight companies in Canada that produce book paper, and they represent a capital investment of from \$125,000,000 to \$130,000,000. They give employment to a large number of workmen and they are equipped to produce 75,000 tons of book and fine paper a year, and the domestic market furnishes a demand for only about 50,000 tons.

By the Chairman:

Q. Per annum?—A. Per annum. So that there is an excess capacity of about 25,000 tons. While the question does not quite pertain to the matter you have in hand, I would like to say that we are in competition with the big mills of the United States who are able to produce book paper at a lower cost than we are owing to their very much larger protection. Our interest in the Bill now before this Committee is that we feel that if the licensing clauses were eliminated from the Copyright Act, it would lead to a diminution in the use of book paper in this country, and, consequently, we are opposed to the elimination of this section.

By Mr. Chevrier:

Q. Will you state in what way the removal of the licensing clauses would decrease the use of paper?—A. Yes. The evidence that was given here yesterday by the periodical publishers would tend to show that under the operation of the licensing clauses their circulation has increased; and also by the opportunity that the licensing clauses give to Canadian book publishers to produce books in this country which they otherwise would not have.

Q. How much has your output increased by reason of the licensing clauses being in the Act?—A. I cannot state.

Q. You cannot say at all?—A. No.

Q. Whether it has increased one ton or 150 tons as a direct result of the licensing clauses?—A. I can give you the figures of production for the last three years.

Q. But no matter what the production is, can you, under oath, ascertain any portion of that increase due to the licensing clauses?—A. No, I think that would be impossible.

Q. You cannot tell whether it was directly or indirectly the result of that? You are under oath now.—A. No, I cannot tell.

By Mr. Irvine:

Q. You would say, however, would you not, that that business has been increased by about as much as the authors have been hurt by these clauses?—A. I do not understand that the authors have been hurt at all. My point is that if there is any virtue in these licensing clauses they must operate to the benefit of the manufacturing industries in this country concerned in the production of books or any part of them—paper in particular.

[Mr. Edward Beck.]

By Mr. Lewis:

Q. There has been an increase in production in the last three years?—A. Not necessarily. If you will allow me to give you the figures, I will give them with my explanation. I have the figures for 1922, for instance, which show that 30,729 tons of book paper were produced in Canada that year; the following year, 1923, there were 35,079 tons; in 1924 the production fell off, and is given at 28,542 tons.

By Mr. Chevrier:

Q. That is the year that the licensing clauses have been in operation?—A. I understand so.

Q. And the production has fallen from 35,000 to 28,000 ton?—A. Yes, but there are other conditions that brought that about.

By Mr. Lewis:

Q. What was the home consumption during those three periods? Have you that?—A. Yes. We group the fine papers together for the purpose of ascertaining export and import figures, and in 1922 our total production was 49,055 tons; in 1923 it was 53,192 tons, and in 1924 it was 50,614.

By Mr. Chevrier:

Q. That is the year the licensing clauses were in operation? They went down again?—A. No. I am giving you the total writing and book papers.

Mr. LADNER: He will give us an explanation of that.

The WITNESS: If I am asked for it.

Mr. CHEVRIER: I don't care where it went, but there is a shrinkage of 2,000 tons.

By Mr. Lewis:

Q. I asked you for the home consumption?—A. The only way we have of getting at that is by deducting the exports. In 1922 we exported 2,200 tons; in 1923, 3,627; and in 1924, 2,141 tons.

Q. So that if the exports are less, it would show that the home consumption was greater—but not very much?

Mr. CHEVRIER: The home consumption was greater in 1924.

By Mr. Chevrier:

Q. How many books did you print in 1924 due to the use of the licensing clauses?—A. We do not print books.

Mr. CHEVRIER: Then what is the use of this evidence?

Mr. RINFRET: There is not the least information upon these clauses one way or the other. This evidence is only wasting time.

Mr. IRVINE: I don't agree with that.

Mr. LADNER: Not at all.

By Mr. Ladner:

Q. You were to give an explanation. I would like to hear that?—A. The falling off of the consumption of fine paper in Canada in 1924, in my opinion, was due to the trade conditions; naturally, paper follows other commodities.

By Mr. Lewis:

Q. You say there has been a general depression in trade in 1924?—A. I think I can safely say that.

[Mr. Edward Beck.]

By Mr. Chevrier:

Q. But no matter what the production was, you did not print one book in 1924 by virtue of the licensing clauses?—A. We have nothing whatever to do with printing. I represent the paper manufacturers.

By the Chairman:

Q. I think, if you will finish your statement, Mr. Beck, perhaps that would be the better way?—A. Mr. Chairman, my statement is finished.

By Mr. Irvine:

Q. You do not suppose we could very well print books without paper?—A. No.

Q. No. Therefore, if we print books in Canada, and you make paper, it is reasonable to suppose you would get rid of more paper?—A. Absolutely.

Q. Therefore, your evidence is relevant?—A. Our evidence is that if there is any virtue in having a book manufactured in Canada, the paper industry will benefit by it.

By Mr. Ladner:

Q. This class of paper you manufacture is used for what other purposes besides books?—A. I am particularly picking out what we call "book paper"; paper that is especially manufactured for use in printing books and periodicals. The industry produces a great variety of paper, a large proportion of which is what is known as "newsprint", which is not affected very much by anything in the copyright law.

By the Chairman:

Q. Not at all, would it be, Mr. Beck?—A. Some books are printed on a very common class of paper, such as newsprint.

By Mr. Chevrier:

Q. Can you tell us what amount of paper would be invested in books and what amount in magazines? I am not a technical man, but how much paper of the output you have would go to books and how much to magazines?—A. Our association does not follow the course of the paper after it leaves the manufacturer. I cannot tell you that.

Q. Is there much more paper used in the manufacture of magazines than in the manufacture of books in Canada?—A. That I cannot say.

Q. Do you know whether there are more magazines made in Canada and circulated in Canada than there are books made in Canada?—A. No, I have no information.

By Mr. Lewis:

Q. Is this same book paper used for school books?—A. Yes, the book paper would be used to a large extent in the production of text books, although in some of the cheaper grades, a cheaper grade of paper is used.

By Mr. McKay:

Q. That is, for scribblers?—A. Yes.

By Mr. Chevrier:

Q. Do you use the same kind of paper for books as for magazines?—A. The better class of magazines are printed on book paper.

Q. Do you mean to say that MacLean's Magazine is printed on the same kind of paper, or on paper superior or inferior to book paper?—A. MacLean's Magazine is printed on what is known as book paper.

Q. I thought one was glazed and the other was rough?—A. No, that is not what makes it book paper. Book paper is made of different grades. You can get it either smooth or rough.

Q. How many books are printed on the rough paper?—A. I cannot say.

Q. How many magazines on the rough paper?—A. I cannot say.

Q. Who asked you to appear here?—A. My association.

Q. What is that association?—A. The Canadian Pulp and Paper Association. As I explained at the beginning, I appear particularly at the request and on behalf of the Book and Writing Section.

Q. The Book and Writing Section of what?—A. Of the Canadian Pulp and Paper Association.

Q. What does it look after?—A. It comprises the manufacturers of book and fine paper.

Q. They do not write any books?—A. No; they are not authors.

Q. They are a portion of your own concern?—A. They are paper manufacturers.

Q. They are a sort of a directing agency within the whole sphere of your activities?—A. Our whole association is made up of a parent association and various auxiliary bodies, and this is one of the auxiliary bodies of this association.

By Mr. Lewis:

Q. Will you finish your statement, Mr. Beck?—A. I have nothing further, Mr. Chairman.

The CHAIRMAN: Has any member of the Committee any questions to ask?

By Mr. Rinfret:

Q. I understand this evidence is merely to show that if there were more books printed in Canada there would be more paper sold? I think that is very plain, but it has nothing to do with this Bill, as regards the principle of the Bill and the rights of the authors. Everybody knows if you print more books you will sell more paper?—A. Yes.

Q. You might as well argue that if you use more patents you will sell more brass?—A. Our position is that by leaving the licensing clauses in the Bill more books and periodicals will be printed in Canada.

Q. And therefore you will sell more paper?—A. Yes.

Mr. CHEVRIER: You have not established that.

Mr. RINFRET: As far as I am concerned, I think it is very plain.

By Mr. McKay:

Q. On the export of your paper there is a heavy duty into the United States?—A. The duty on book paper going into the States is one-fourth of one cent a pound with a 10 per cent ad valorem in addition.

Q. Have you all the rates on all papers? There is no duty on newsprint?—A. No.

Q. And no duty on ground pulp?—A. No.

By Mr. Ladner:

Q. What kind of paper is that?—A. This is described in the American tariff at paragraph 1301: "Printing paper not specially provided for, one-fourth of one cent per pound and 10 per cent ad valorem".

Q. What is the reverse situation? Supposing they were sending it into Canada?—A. The duty on the same class of paper coming into Canada is covered by paragraph 197 of the Canadian Tariff and described as "Paper of all kinds; N.O.P. 15—22½—10 per cent—22½ and 25. The general tariff is 25 per cent".

[Mr. Edward Beck.]

Q. How do you compare them? Is the United States duty lower than ours or higher?—A. It works out higher; it works out on the basis of Canadian paper going into the United States of about 35 per cent as against 25 per cent on ours.

Q. 50 per cent higher?—A. Yes.

By the Chairman:

Q. Would one-fourth of one cent per pound added to 10 per cent make the 35 per cent?—A. I understand it works out that way.

By Mr. Rinfret:

Q. Your evidence would sum up this way, would it not, that if I were allowed to build on somebody else's real estate, I could sell more lumber?—A. No. I cannot put it that way.

The CHAIRMAN: Is there anything further to ask Mr. Beck?

The WITNESS: Before I sit down I would like, if I may, to take issue with the statement of the gentleman that we are trying to force the authors to give up something that belongs to them. Our position is not that at all. We do not want to take anything away from the authors which rightfully belongs to them. The position as I understand it is that prior to the enactment of this law we had a law in Canada covering copyright which contained a manufacturing clause intended to assist in building up the publishing industry in Canada. These licensing clauses, as I understand it, were incorporated in the present Bill to meet, as near as possible, the old situation—

By Mr. Chevrier:

Q. Just a moment, while talking about that old situation. That was by virtue of what?—A. By virtue of the Copyright Act, as I understand, in force in Canada.

Q. What year was that in vogue?—A. My understanding was—I have not studied the subject very carefully—that it was adopted in 1921.

Q. And what was your position before 1921?—A. Whose position?

Q. Your paper manufacturers' position? What was it before 1921?—A. I understand there was a manufacturing clause in the old Bill which required as a condition to securing a copyright in Canada the production of the copyrighted book in Canada.

Q. And how many books were printed in Canada during the regime of that law?—A. I cannot say.

Q. There was not one?—A. I cannot say.

Q. I can tell you there was not one.—A. We were not taking anything from the authors then and are not now.

By Mr. Ladner:

Q. Is it not the fact that the presence of these clauses causes the American publishers to give more consideration to Canadian authors?

Mr. CHEVRIER: No; maybe to serials, but not to books.

The witness retired.

DAN A. ROSE called and sworn.

By the Chairman:

Q. Whom do you represent?—A. The Canadian Copyright Association.

By Mr. Chevrier:

Q. What is the Canadian Copyright Association?—A. A combination of printers and publishers.

Q. Who are they?—A. There are a number of them, the Ryerson Press, Hunter Rose, the Musson Book Company—I can give you a large list.

Q. I do not catch the names of any authors in that Copyright Association?—A. There are no authors.

Q. You mean this Copyright Association has no authors in it?—A. Quite possible.

Q. What is the purpose of the Copyright Association?—A. To prepare a fair act for the protection of authors.

Q. But you have no authors in your association?—A. None.

Mr. RINFRET: This whole thing is a farce.

By Mr. Chevrier:

Q. When you discuss the legislation with your government, where do you get the authors' viewpoint from?—A. Our first connection starts away back in the days of Sir John Thompson—

Mr. CHEVRIER: There is no necessity to go back before the flood.

The WITNESS: (Continuing)—when Hall Caine was sent out to Canada and Mr. Dolbrey, one of the original drafters of the Berne Convention—

Q. But tell me to-day—if you had to discuss the question of the copyright laws you would discuss it only from your own side? You have no authors to discuss it with?—A. Absolutely no.

By Mr. Ladner:

Q. Have you any copyrights from authors, that you possess—have you bought any outright?—A. A number of our members have. The firm I represent does not publish; we simply print.

Mr. LADNER: I would suggest, Mr. Chairman, as you mentioned a while ago, that the witness make his statement; that seems to me the most effective way; and while I am on my feet I think we might do it in a spirit of goodwill towards these people, because they come here to give us the benefit of their views.

Mr. CHEVRIER: Some of them do.

Mr. LADNER: We are in a semi-judicial position here, and the dignity of our position as well as a spirit of fairness to the witnesses should cause us to approach the question without rancour.

The CHAIRMAN: I think we should hear what every witness has to say and then we can judge of its value ourselves. I think the witness should make his statement and then if there are any questions to be asked, ask them afterwards. Will you proceed with your statement, please.

The WITNESS: Application was made for the publication of the Boston Cook Book under the Act of 1921. The book selected was the most expensive book they had any chance of making in Canada, from the printer's standpoint, if granted a license. The application was duly made with the result that Little Brown of Boston assured the department that they would reproduce the book in Canada, which they did. That book was reproduced in Canada at a bagatelle of the cost that it would have cost the Canadian printer, because the law provides for the importation of plates from the United States and does away with the necessity of typesetting. Had a Canadian got the license he would have had to set the type. The result in that case was the printing of 5,000 copies of that book, and they are now placing another edition of 5,000 copies. The author was not affected in any manner, shape or form; the only man inconvenienced was the Boston publisher. The Boston publisher, instead of printing his book in Boston, had to come to Toronto and print the book there, and the difference in cost was a mere bagatelle. This fight to-day is a fight between

the Canadian publisher—not the Canadian book jobber—but the Canadian publisher and the United States publisher. The United States publisher has this market and is fighting every day to stop the printing of books in Canada. The jobbers went so far as to threaten at a meeting to blacklist any printer who dared apply for a license. One license has been applied for, and the author in Canada cannot point out, during the year the Act has been in operation, one instance wherein he has suffered, or his writings have been affected. They cannot point out where the Act of 1921 has done the slightest thing to their disadvantage. The fight is the fight between the Canadian publisher and the United States publisher, and does not concern the author. The author is not concerned at all in the matter—

Mr. RINFRET: I submit this is not evidence; this is an argument, and we are at a great disadvantage in that we cannot easily question this witness. He is arguing the case and not giving evidence at all.

Mr. LADNER: He is stating his opinion as an expert in the trade.

Mr. RINFRET: He says the author is not even concerned.

The CHAIRMAN: I think it will be better to let the witness make his own statement.

Mr. RINFRET: I am trying my best to do so.

Mr. IRVINE: I would suggest, Mr. Chairman, that you ask the witness to tell us in what way this clause will affect his particular business.

The WITNESS: The withdrawal of the licensing clauses would cut our printing staff in two; it would put numerous men out of work throughout the Dominion. What with our laxity of copyright and our Berne convention, our school books are being imported into the country now. We are going to be left, as Mr. Appleton very properly pointed out yesterday, without a publishing business, if we do not have a protective clause such as has always been in the Act. It is not a new thing at all, but its removal would wipe out any chance the publishing business ever had of growing in Canada.

By Mr. Chevrier:

Q. The cook book, the Boston Cook Book, who was the owner of that?—

A. Little Brown.

Q. Who is Little Brown?—Little Brown of Boston.

Q. An American?—A. An American.

Q. You licensed him?—A. No.

Q. You threatened to license him?—A. We asked for a license.

Q. You asked for a license?—A. Yes.

Q. And as a result of that you printed a Yankee book in Canada?—A. No, sir.

Q. You got him to print it in Canada?—A. Yes.

Q. Go ahead and do it again, but do not tamper with the Canadian author.
—A. Give me an example where we can tamper with the Canadian author.

Q. You did that because he was an American owner; that was good.—A. I will tell you now what will occur. Ralph Connor's last novel—there were 24,000 copies of that book shipped from the United States to Canada—and those books were seized; they put such a low value on them that they were seized for under-valuation. There is a Canadian author, Ralph Connor. His next book will be printed in Canada, and we will not apply for a license. They will print the book here and take no chances. But if that licensing clause were there the book would be shipped from the United States here.

Q. Whose fight is it if it is not the authors' fight?—A. Will you answer me this: what difference is it to Ralph Connor whether the Canadian market supply

[Mr. Dan A. Rose.]

is printed in the United States or Canada? In the contract Ralph Connor signs, he gets his royalty no matter where it is printed.

Q. If this is not the authors' fight, whose is it?—A. The publishers' fight.

Q. The authors are not interested in this at all?—A. Not at all.

Q. Have you the nerve to stand up there and say that?—A. I have, sir.

Q. If the licensing clauses are removed, they will cut your staff in half?—

A. Yes.

Q. You swear that?—A. Yes sir.

Q. When was your staff increased by half?—A. We have had a printing clause in our Act right along.

Q. How many books did you print as a result of the licensing clauses?—

A. I would say half a dozen.

Q. Which ones?—A. There are two or three under contemplation at the present time. "Be Good" is one, and the very book you had in front of you yesterday, "Thundering Herd" is another.

Q. What are the four others?—A. I am trying to think of the titles.

Q. What is the nationality of the author?—A. Canadian and American.

Q. How many Canadians out of the six?—A. The majority were Canadians.

Q. How many?—A. I would say five.

Q. Who are they?—A. I could not tell you the authors' names.

Q. Do you mean to say you have these books in your own shop and you do not know the names of the writers?—A. I do not know the authors' names; they are sent in by the Musson Book Company and I do not even read them.

Q. When did you increase your staff by half?—A. Unfortunately at the present time we are cutting down instead of going up.

Q. Going down?—A. Yes, going down at the present time.

Q. The licensing clauses are there?—A. Yes, but the books are not being made, because selling conditions are very bad.

Q. Why didn't you apply for more licenses?—A. Trade is coming into Canada without applying.

Q. What was the condition before 1921?—A. All books were being imported.

Q. Why did you say a minute ago that under these clauses you were thriving?—A. I give you the very item of school books. We were making great quantities of school books for the West.

Q. Who gave you the orders for the school books?—A. MacMillan.

Q. Who do they get their orders from?—A. The Government.

Q. Let the Government look after the printing.—A. The Government does not look after the printing.

Q. You told me that previous to 1921 you were thriving?—A. Yes, we were printing the Alexander Readers for the West. A new series of readers was introduced, and MacMillan got one, Nelson two, and Gage two.

Q. Who are they?—A. A publishing firm in Toronto.

Q. They are all being published in Canada?—A. No.

Q. Do you mean to say that some of the Ontario and some of the Western school books are being printed in the United States?—A. Yes sir.

Q. And that is the reason your trade has fallen off?—A. It has been the reason for the decrease in our trade.

Q. Why didn't you license them?—A. Because these books are printed in England by Thomas Nelson. You mentioned the United States, and I said books were printed in the United States, but the great bulk of the books are coming from Great Britain, for the western schools.

The CHAIRMAN: Are there any further questions? Thank you, Mr. Rose. Now, we have several witnesses to hear, gentlemen, and I would ask you to be so kind as to avoid, if possible, any discussion between members of the

[Mr. Dan A. Rose.]

Committee, because if we do that and simply hear the statements and ask questions afterwards we can get through in a very short time. Mr. Sutherland is next.

The witness retired.

WALLACE A. SUTHERLAND called and sworn.

By the Chairman:

Q. Whom do you represent in this matter, Mr. Sutherland?—A.. The Toronto Typothetae, an association of employing printers. Mr. Murray was supposed to have given his evidence, but had to leave for Toronto last evening, and I am taking his place. I would submit this brief memorandum, sir.

The Toronto Typothetae, the largest organized body of employing printers in Canada, and representing approximately 75 per cent of the total printing and production of Toronto, is strongly opposed as a body to any change in the licensing clause of the present Copyright Act. Joining with the Toronto Typothetae in this protest are the affiliated associations of Montreal, Hamilton, and Western Ontario together with other Associations of allied industries. As an association, organized solely for the benefit of the printing industry, we are naturally keenly interested in any legislation, which would benefit the industry as a whole, and give much needed employment to a number of printing trade employees. The printing and publishing firms, represented in the three combined Typothetae Associations above mentioned, employ approximately a total of seven thousand men and women working in the various mechanical departments of their plants. The industry at the present time is in a chaotic condition and in Toronto alone, where we conduct an employment bureau for service to our members, we have a list of three hundred experienced employees seeking positions, some of whom have not been employed for the past four or five months. It was therefore felt by the Toronto Typothetae executive committee that any measure which would tend to decrease the production, and increase the present aggravated unemployment situation should be protested against.

As Secretary Manager of the association I was instructed to join with the representatives of the other branches of the industry affected, who are appearing before your Committee, and place our views before you.

There was reference made to several firms yesterday in the evidence, which are members of our association, including Copp Clark, the Ryerson Press, or the Methodist Book Room, Gages, and so on; they are all members of the Toronto Typothetae.

I have a wire here from the Ryerson Press, which I would like to read also:

"Glad to learn you are protecting the license clause. It is our wish that it should remain as it is.

RYERSON PRESS,
Printers and Publishers."

That is all I have to submit, sir.

By Mr. Lewis:

Q. Speaking about the unemployment, especially during the last four or five months, was there none prior to these clauses going into effect?—A. That is rather a hard question to answer, because as you perhaps know, there was a strike in 1921 and a large number of men were trained for the industry and brought into the industry.

Q. The unemployment is not due, then, to the clauses in now?—A. I would not say so.

Q. Would you say the unemployment was due to the general depression?
—A. Yes, it is due to the general depression in some ways and to the influx of imported printing, which the Marking Act—

By Mr. McKay:

Q. Were the strikers not taken back?—A. Yes, but in the meantime there were several open shops established, and their places were filled to some extent.

By Mr. Lewis:

Q. You think by removing these clauses it would make unemployment greater?—A. Yes, that is the view of our committee.

Q. Has the situation got any better as a result of these clauses?—A. To a certain extent, yes sir, because every book published here would certainly give employment to skilled mechanics.

By Mr. Chevrier:

Q. How many books were published, Mr. Sutherland?—A. There was one that I know of which Mr. Murray was going to speak of, but he had to return to Toronto.

The CHAIRMAN: If that is all we will take the next witness. Thank you, Mr. Sutherland.

The witness retired.

The CHAIRMAN: The next witness is Mr. Haydon.

J. A. P. HAYDON called and sworn.

The WITNESS: Mr. Chairman and members of the Committee; I represent the employees engaged in the printing industry of Canada. I am president of the Ontario and Quebec Conference, Typographical Union, and I was Chairman of a national conference called and held at London, Ontario, in September of last year. Amongst the subjects discussed at that national conference was the Canadian Copyright Act, and at that meeting I was instructed, being a resident of Ottawa, to watch particularly any legislation that might be introduced in the House of Commons which would have for its purpose the lessening in effect of the protection now afforded the Canadian printing industry by reason of the Canadian Copyright Act.

We have watched this legislation for a considerable time, and we are about fed up with the number of times we are compelled to appeal to the House of Commons and to Parliament for protection under this law. In 1919 the labour movement of this country, as represented by the Labour Congress of Canada, applied for legislation to give to Canadian printers the same protection that printers were accorded in the United States, by reason of a Canadian Copyright Act. The following year a bill was introduced in Parliament, as you know—and I am only reciting history to show our interest in the matter. The bill was not proceeded with then, but in 1921 it was taken up and I appeared before the Committee together with Mr. Tom Moore, representing the Canadian employees engaged in the printing industry, and we were successful, jointly with the publishers and other interests concerned, in having the present licensing clauses inserted. Certain things have been said regarding the operation of the licensing clauses. It was said yesterday that the importation of plates did not give employment to Canadian printers. It was said in a reference to this Bill No. 2 that the importation of plates does not give employment to Canadian artisans. The person who said that either does not know anything about it or is deliberately misrepresenting facts.

[Mr. Wallace A. Sutherland.]

Mr. RINFRET: Mr. Chairman, that is not evidence.

Mr. CHEVRIER: I am not going to stand for that statement.

The CHAIRMAN: Perhaps you might modify that statement.

Mr. CHEVRIER: You will have to modify it.

The WITNESS: At any rate, it is not in accordance with the facts, and I am going to show now why it is not in accordance with the facts, because the importation of plates only prohibits composition. Composition is only one branch of the industry. When these plates are imported they have to be made up into forms; they then have to be proved; they then have to be sent to the press and printed and separated and bound into books; and it takes skilled mechanics to do all these processes. Even if the plates are imported—and we are agreeable to that, that the Canadian publisher and the Canadian author will not have to pay for the additional cost of the setting up of this matter. Furthermore, so long as the licensing clauses are in the Act, when a license is applied for we do not for one moment imagine that the American publisher is going to be so good as to give us all his plates, and the result is that the licensing clause will be instrumental in having this material set up in Canada.

So far as the number of books printed in Canada goes, we are not concerned with how many books were printed; the fact of the matter is that it was proven that one book was printed in Canada. That fact proves positively that it was of some benefit to the Canadian printer, and therefore we desire that, as far as we are concerned, the licensing clauses continue in the Act. Something has been said about the depression in the printing industry. I prepared a statement from Government records not long ago, and it shows that from 1921 up to September of last year the printing industry of Canada lost 2,074 employees; there are 2,074 less employees engaged in the Canadian printing industry now than there were in 1921. There are many reasons accountable for that, but I do insist that the Canadian printing industry was never in such a chaotic condition as it is at the present time. That being so, it is necessary that we get every protection possible to further our industry, and therefore it is one of the reasons why we are concerned about this Act.

Now, there are some other features of the Act in which we are interested. For instance, section 27 of the Act and section 3 (d) as well—that is, the Act of 1921. During the time this Act was in force,—it was known at the time this Act was drawn up, if my memory serves me correctly, and I think it does, that the purpose of this section was to allow for the importation of one book only. Therefore we suggest that amendment be made to this clause by having the first line thereof read as follows: "To import one copy of any book lawfully printed in the United Kingdom." We submit that as an amendment to that clause.

Now, clause 13 of the Act; we also suggest an amendment to that, by the insertion in subsection 1 of section 13, in the third line thereof as follows: "Copyright subsists if at any time after publication or announcement of publication—"

By Mr. Chevrier:

Q. Just at that point, that has been pointed out before and I do not get the reach of that. What is it you say, "notice of publication" or what?—A. Announcement of publication. The purpose of this is that anyone connected with the printing or publishing industry knows a long time before a book is printed that announcement is made that the book is to be printed, and therefore to have simultaneous publication in Canada and the United States. We ask that this be inserted in the Act.

Q. "Announcement of publication"?—A. Yes, so that allows the Canadian publisher the same advantage in having his work printed at the same time, as

the United States publisher. In conclusion, let me say that in our opinion the fight is not between the authors and the Canadian printing industry. Mr. Leacock yesterday made a very serious threat against the industry, but we are not concerned about that. The fight is not between us and the authors; it is a fight between foreign publishers and printers, and Canadian printers and the Canadian printing industry, and we submit that the licensing clauses should remain as they are in the Act, and let us stop this dickering with the Canadian Copyright Act and give it a fair trial as we do give our other Acts a fair trial.

By the Chairman:

Q. There is a question I would like to ask you. With reference to the unemployment in the printing trade now, do you think it is caused by the fact that a great many newspapers have gone out of business all over Canada, and in towns where there used to be two newspapers there is only one, in many places?—A. There are many causes which bring about unemployment in the printing industry. Printing was recognized during the war, or classified, as one of the non-essential industries. I do not agree with that, but as trade in general is depressed, the printer is the first one to feel the effects of it. Then we have had a very serious disruption between the employers and the printers; we have had a strike since May 1, 1921 which has not yet terminated in a great part of the industry, and as a result of that, as Mr. Sutherland pointed out, a large number of people were brought into our industry with the result that a great many skilled mechanics left. The high cost of production has resulted in newspapers combining, and as was pointed out yesterday, fourteen magazines have gone out of existence. All of these things militate against the printing industry, and our good mechanics are going to the United States.

By Mr. Chevrier:

Q. Are there no licensing clauses in the United States?—A. I am not concerned with the United States law; I am concerned solely with the Canadian law.

By Mr. Rinfret:

Q. I understood you to say you wanted the Copyright Act to have a fair trial as it is?—A. Yes sir.

Q. Are you aware that in 1921, when this Act was passed, reservation was made as to the licensing clauses?—A. Yes, sir, I am aware of that.

Q. Are you aware that in 1923, before this Act was put into force, the same reservation was made?—A. Yes sir.

Q. Then, really it is not a question of giving the Act a fair trial, but more a question of deciding once and for all whether we are going to have these licensing clauses?—A. We have these clauses now, with a reservation to which we did agree at the time, a reservation regarding British subjects.

Q. Are you aware, for instance, that when this was before the House there was a reservation as to those licenses?—A. What do you mean by a reservation?

Q. In 1921, in order to put the Act on the statute book, there was a reservation made as to these clauses. It was agreed at the time that these clauses would be dealt with later on, and that the Act would not be put into force before a decision was arrived at?—A. I have no knowledge of any such reservation.

Q. Then, I fancy you did not read the discussion which took place?—A. I did. I was right in the House and listened to it.

Q. And you are not aware of that?—A. I have no knowledge of any reservation.

Q. Then all I can say is that you certainly missed some statements that were made even by the Minister of Justice to that effect. Are you aware further that in 1923 when the Hon. Mr. Robb brought down the bill in the House, the effect of the bill if it had been passed as originally drafted would have been to do away with the licensing clauses?—A. I am perfectly aware. In fact, I interviewed the Minister, Mr. Robb, on the matter and voiced the objections of the organized employees against the bill.

Q. You are aware of it?—A. I am aware of it as president.

Q. Are you aware that when it went to the Senate, at the very first sitting the Senate did away with the amendments which Mr. Robb had drafted to his own bill?—A. Yes, I am aware of that too.

Q. Are you aware that at the next sitting the bill was restored to its original form?—A. I am aware of that too.

Q. Are you aware that when it came back again to the House once more, objection was raised to the bill from all sides of the House? What I am trying to point out is that Mr. Haydon says, "Give this bill a fair trial," and I want Mr. Haydon to admit that the parties never did agree to the bill as it is now?—A. I am arguing, Mr. Chairman, if I may be allowed, that we want no change in the Act as it stands now. That is the statement I made, and that is the statement I stand by, except the few minor amendments I suggested.

Q. I know that, but when you say, "Give this bill a fair trial," you mean to give it a fair trial in the shape it is in now?—A. Absolutely. Furthermore, before the Act was in force a month, a bill was introduced in the House of Commons very similar to the one you are now considering. That was before the Act was one month on trial.

Q. There is another matter. Mr. Haydon, do you admit that an author's work when it is in manuscript is his property?—A. Of course it is.

Q. Would you argue that if all the authors agreed not to print any of their works for a time, this Act or any other Act could force them to go to your printing office and give you their manuscripts?—A. Certainly not.

Q. Then how do you reconcile that with your stand?—A. Once his work is released for the consumption of the general public, then it is entirely a different matter.

Q. That is your viewpoint?—A. That is my viewpoint.

Q. Your view is that the author loses his property when it is released to the public?—A. He never loses his right. The author's interests are always protected under the licensing clauses, because he is guaranteed royalty.

Q. That is according to your view, not according to the view of the authors?—A. I am not representing the authors; I am representing the employees in the printing industry. They are quite capable of presenting their own case.

Q. Your viewpoint is that as long as the author has decided to print his work, his property remains, but not as he sees fit, but as you see fit?—A. He has the right to print his book and has the right under the licensing clauses to print his book. But if he refuses to print his book in Canada, we claim that the publisher has a right to print his work, providing that he pays him his royalties in Canada.

Q. That is your viewpoint?—A. That is our viewpoint.

By Mr. Ladner:

Q. Are there not some amendments in the bill that you think would be advantageous to the Copyright Act and in the interests of your own organization?—A. I have gone over Bill No. 2, my executive have gone over Bill No. 2 very carefully, and we are only interested, so far as our industry is concerned, in the licensing clauses.

Q. As to the other clauses which are in now, you do not pass any opinion?—A. They are no concern of ours; we are not interested.

[Mr. J. A. P. Haydon.]

Q. You made the statement that you wanted the Act to remain as it was?—A. Insofar as the licensing clauses are concerned. For instance, in regard to the protection of gramophone records and broadcasting, that is of no concern to the printer.

By Mr. Lewis:

Q. Would you consider the removal of these clauses detrimental to the author?—A. No, I would not.

Q. Are you speaking as president of your organization, or as an author?—A. That the removal of these clauses would be detrimental to the author?

Q. Yes. You do not consider that it would be detrimental to the author if they were removed, that is, if these licensing clauses are removed as is suggested in the amendment?—A. We think at the present time that the licensing clauses afford protection to the author as well as to the printer.

Q. Are you speaking now as an author, or otherwise?—A. I am only giving you my opinion. I might tell you that I could qualify for membership in the Authors' Association. I make my living by corresponding for a labour paper which has the largest circulation of any weekly newspaper in the world.

By Mr. Ladner:

Q. In what way are the authors protected?—A. By being guaranteed his royalties. That is all an author writes for.

By Mr. Chevrier:

Q. Would you make that plain? A. I think it has already been made plain by previous speakers.

Q. Would you make it plain how the licensing clauses would assure to the author of a book his royalties? I am open-minded on this subject; I am open to conviction in regard to serials; but convince me in regard to books that the licensing clauses are beneficial to the writer of books. Show me that? A. When his book is being published he makes a deal with the publisher, and when he makes his deal he protects his own interests, and he has two markets whereas previously he had only one. He is therefore in a better position to get a better price than if he had only one market.

Q. Will you show me how he has two markets? A. He has the market of Canada, and the market of the United States in which most books are printed.

Q. You are trying to convince me now. Suppose that I wrote a book. I am not like a Scotchman, I am open to conviction. But suppose I wrote a book—I do not suppose I could—but will you show me how these licensing clauses would be of benefit to me?—A. There is certainly no detriment to you under the licensing clauses.

Q. But show me how there is a benefit? A. There is no detriment.

By the Chairman:

Q. You say it is first produced in the United States and then in Canada. How would the licensing clauses operate?

By Mr. Chevrier:

Q. Here is my manuscript. Suppose that I was going to publish that manuscript.

Mr. IRVINE: If there is any Act in Canada to prohibit the publication of that manuscript it would be a good Act.

[Mr. J. A. P. Haydon.]

By Mr. Chevrier:

Q. Go through the process and show me how they would be of benefit to me if I wrote a book? A. I think that would be a fair question to put to the author who sells his works. I am not an author.

Q. Then if you cannot show me how it is going to be beneficial to me, show how it is not going to be detrimental? A. I might answer that question by putting another. Have the licensing clauses been detrimental to any one Canadian author?

Q. Yes. A. To whom?

Q. It has been detrimental, in the first place, in that it has limited his right of ownership? A. Single out one author who has been hurt by the application of the licensing clauses. We do not know of one.

Q. No, because it has not benefited you.

Mr. IRVINE: We are listening to the evidence of this gentleman, and he is not in a position to say how it hurts or benefits an author because he says he is not an author. He is here telling us how these clauses affect his particular organization. That is his object in coming here.

Mr. CHEVRIER: In so far as Captain Haydon limited himself to making assertions in regard to the printing trade, I remained quiet. But the moment he began to make the assertion that these licensing clauses protected the author, I am at perfect liberty to ask him to show how they would be beneficial to me.

Mr. IRVINE: The witness has clearly stated what he meant. It is his opinion that the author is guaranteed royalties and that that is a protection of the author.

The CHAIRMAN: I think that should be satisfactory.

Mr. CHEVRIER: I submit that it is not satisfactory. He stated that the author is protected by getting his royalty, but I fail to see, and I want him to show me how I am protected under the licensing clauses. Let him show me.

WITNESS: I do not think it is necessary. The Act specifies the manner in which it shall be done.

Mr. CHEVRIER: Show me.

By Mr. Ladner:

Q. In the position which you occupy, have you come across any cases where they have been detrimental to an author? A. I have not heard of one author to whose interests they were detrimental, except the authors who presented their case yesterday.

By Mr. Chevrier:

Q. Do you doubt their word?—A. No, but I have heard no complaints of an author.

By Mr. Ladner:

Q. In the course of your activities in connection with your business, taking it by the week or by the year, you have heard no complaints? A. No complaints.

Q. You have heard no complaints that it would affect them adversely, or beneficially, or otherwise, outside of this theory of interfering with private rights or citizens' liberty? A. I have not heard any.

Mr. IRVINE: On that point I think we ought to take the opinion of the authors themselves. We can judge on that point on the evidence given by the authors.

WITNESS: I think I have answered the question.

By Mr. Rinfret:

Q. Are you aware of one case where a license has been applied for for a Canadian book? A. I stated previously that evidence was submitted yesterday where one book was printed in Canada. Evidence was submitted that the Boston Cook Book was printed in Canada.

By Mr. Chevrier:

Q. That is an American book? A. The fact remains that that book was printed in Canada.

By Mr. Rinfret:

Q. The point I am interested in is this: You have just stated that so far as you know no author has applied for a license. Are you aware of one case where a license has been applied for for a Canadian book? A. So long as the licensing clauses are there, we do not have to apply for it if we can make a deal with the American publishers for the publication of the work in Canada.

By Mr. Lewis:

Q. Would that book have been published in Canada if the licensing clauses had not been there? A. I doubt whether it would have been. You may say, "Yes, how do I know what is in the minds of the publisher?" The fact remains that the book was printed in Canada.

By Mr. Rinfret:

Q. What could have prevented that book from being printed in Canada if this Act had not been in force? A. Nothing. No agency in the world could have stopped it. But the Act was in force, and the book was printed by reason of its being in force.

By Mr. Ladner:

Q. How long has the Act been in force? A. Since the first of January, 1924

By Mr. Irvine:

Q. Was this book first printed in the United States? A. Absolutely.

By Mr. Rinfret:

Q. Are you aware that before this Act was put into force in 1923, during the course of the Session, the Minister made a statement in the House that his government and the government of the United States were going to enter into an agreement, and that these clauses would probably never be put into effect? A. But the agreement has not been entered into.

Mr. RINFRET: I know that, but I am asking you—

Mr. LEWIS: We are dealing with the Act as it is.

By Mr. Irvine:

Q. How long, did you say, has this clause been in effect? A. The law has been in effect since the first of January, 1924.

Q. In your opinion do you think it has had an opportunity to prove one thing or the other? A. No, it has not, because a certain number of months must elapse before you know how to proceed.

By Mr. Chevrier:

Q. Fifteen months, not having been long enough, as you say, to show a satisfactory working-out of the Act, how long do you think it would take to show a satisfactory or non-satisfactory working-out? Another fifteen months? —A. No, I submit that the Act should remain in effect for at least five years

to show how it works out in a five-year period before any change is made.

Q. A five-year period is your guess?—A. Yes, my estimate.

Witness retired.

Mr. CHEVRIER: Mr. Kelley is here from Toronto and I would like him to be heard now. I desire to make this statement: The statements that are being made that this is a matter in which the authors are not concerned are hardly fair. I personally represent the authors, and I think that statements that the authors are not concerned should not be allowed.

The CHAIRMAN: Can you not trust to the good sense of the Committee to understand that that was only the opinion of the witness giving evidence.

Mr. CHEVRIER: I have the greatest confidence in the good sense of the Committee, but I do not think these statements are fair.

Mr. LEWIS: Can any member represent any particular party on this Committee?

GEORGE M. KELLEY called and sworn.

By the Chairman:

Q. Will you state whom you represent?—A. I am representing the publishers' section of the Toronto Board of Trade.

By Mr. Chevrier:

Q. What is your occupation?—A. I am a lawyer, solicitor, barrister.

Q. Practising in Toronto?—A. Yes.

Q. In what firm?—A. Cassels, Brock & Kelly. For a number of years I have acted as adviser for this section of the Board of Trade in copyright matters, and I have followed the progress of copyright legislations through this House since 1919. I may explain that the publishers' section of the Board of Trade of Toronto comprises practically all the publishers of books in the Dominion. As it happens, the book publishing trade is centred in Toronto, and nearly every recognized publisher in that city is a member of the section. So, it is thoroughly representative of the views of the publishers.

By Mr. Lewis:

Q. What do you mean by publishers?—A. As to publishers, I mean persons who arrange for the publication of an author's work or who distributes the work, when it has been produced, to the retail trade and to the buying public.

Q. But not the authors. You do not represent any authors?—A. I will come to that in a moment. I am acting solely for the publishers.

Mr. McKay:

Q. Do you draw any distinction between the publishers and the printers?—A. Yes, that distinction has always been drawn. A publisher has always been regarded as the person responsible for publication, for issuing copies to the public. The printer has no concern in that. He acts on the instructions of the author, or of the publisher, but he takes no financial risk, and he has no authority to issue copies to the public. The publisher is, of course, responsible in law for issuing the copies.

By Mr. Lewis:

Q. Is that not a dignified name for a book agent?—A. I have heard the publishers referred to as "Jobbers". That means that they purchased books

[Mr. J. A. P. Haydon.]

wholesale and sold them to the retail trade, but, of course, that term is merely used to lessen their importance in the eyes of the Committee, and I think becloud the function that publishers really exercise.

By the Chairman:

Q. I think, when that term was used before the Committee, it was used regarding publishers who purchased the book, and resold it, rather than those who printed and made the books?—A. Mr. Chairman, you cannot distinguish between the members of this section in that respect. I listened to Mr. Appleton's evidence yesterday, knowing his business. Sometimes he purchases sheets, sometimes he purchases books, and sometimes he has them printed. It is the same with every member of this section. Sometimes they cause books to be produced by having them printed, and sometimes they import the sheets and have them bound up, and sometimes they buy the bound books. That is so with all the members, particularly the larger firms, such as the Ryerson Press, the Musson Book Company, the Oxford Press and others, all of whom are members of the section, and all of whom have large establishments in Toronto. You will have to bear in mind that the publisher is a necessary functionary to enable the author to dispose of his works. The author approaches the publisher—and I am speaking now from my own knowledge in connection with publishers who are clients of mine—to see if his work will be accepted; if it is marketable, and there is a complete identity of interests between the publishers, whom I represent, and the authors in respect to copyright protection that is afforded to authors. They also require the benefit of this protection to carry on their business; otherwise they could not enter into contracts with the authors or enter into contracts for the purchase of works which are supposed to be protected by copyright. So that, as far as the consideration of the question is concerned, there is complete identity between the authors and the publishers, and until the Canadian Authors' Association was formed it was this section that represented the authors before Parliament and that opposed what the authors deemed objectionable in the bill—in Bill "E" in 1919, and that co-operated with the authors in 1921, and is still to-day acting in concert with them.

By Mr. Lewis:

Q. Before you proceed; do you find that sometimes the publisher is also the printer?—A. Well, he is not the printer, but he employs the printer. There are cases like Ryerson Press in Toronto; they are printers as well as publishers.

Q. Do they have this two-fold function?—A. They are members of the section, and they have expressed a view, as Captain Haydon gave you in the wire, in favour of the licensing clauses, and Mr. Appleton yesterday presented his personal predilection for that, and he said that one other—I do not know who it was—was of the same opinion.

Q. You chiefly represent the publishers in coming in contact with the authors in getting the work on the market?—A. Yes.

By Mr. Chevrier:

Q. On that score, Mr. Kelley, you represent a certain association?—A. Yes.

Q. Apparently it is the same association which Mr. Appleton mentioned yesterday, when he said there were twelve people, twelve corporations, or twelve interests in that association, and that he represented the minority, representing one of them, Musson's, and to-day Captain Haydon has a telegram from Musson's—A. No, the Ryerson Press.

Q. That would be two?—A. Yes.

Q. Two out of twelve, if twelve is the exact number? Are there twelve or ten or twenty-four or how many interests in that association?—A. I cannot answer as to the number of houses that are members of it, but I have frequently seen 15 or 20 members around their table.

[Mr. George M. Kelley.]

Q. So, at all events, to put it in the way that Mr. Appleton put it yesterday, you represent all of them except two?—A. I represent the section which, as I said, acts unanimously. I have been at many of their meetings and I have never known a minority report brought forward, or anything other than unanimous action.

By Mr. Lewis:

Q. Do you represent those who do printing, such as the Ryerson Press and the Copp Clark Company?—A. Only as they are members of the section and as they have expressed their views.

Q. They are not printers, but importers?—A. You must not consider them as printers. They are both publishers in the true sense of the word, as persons to whom the author may go and submit his manuscript, and who will arrange to have his book printed, published, and pay him his royalty.

Q. Not necessarily importers?—A. Yes, at times.

Q. That is part of their work?—A. All of these houses, the Ryerson Press, the Musson Book Company, etc., are large importers as well as large publishers, so that they have a dual capacity. Every publisher has. It is part of the custom of the trade and a necessity of the business.

I would like to read, Mr. Chairman, the resolution which was passed at this section on Saturday which I was asked to transmit to you. Through an inadvertence it was addressed to Mr. Chevrier as Chairman, but was intended for you. This is a resolution regarding the Bill to amend the Copyright Act of 1921, and was passed by this section on the 7th of March, 1925.

THE PUBLISHERS' SECTION OF THE TORONTO BOARD OF TRADE
RESOLUTION REGARDING THE BILL TO AMEND THE COPYRIGHT ACT, 1921, PASSED
7TH MARCH, 1925

Resolved that the publishers' section of the Toronto Board of Trade make the following representations regarding Bill 2 to amend the Copyright Act to the Special Committee of the House of Commons now considering this bill.

The provisions of the bill with which the publishers' section is particularly concerned are:—

(a) The repeal of the licensing provisions contained in sections 13, 14 and 15 of the Act; and

(b) The limiting of importation by amendment of sections 26 and 27 of the Act.

As to (a): The publishers' section has always been opposed to the principle of these compulsory licensing provisions. It therefore approves of clause 5 of the bill repealing them.

As to (b): The publishers' section feels that the interests of Canadian authors, printers and publishers were not protected when the importation clauses of the Copyright Act were settled.

Under the provisions of paragraph (d) of sub-section 3 of section 27 of the Act, permission is given to import any book published in the United Kingdom or a foreign country adhering to the Berne Convention. This would permit of the Canadian market being flooded with competing European copies thus rendering the Canadian copyright valueless.

The only person permitted to import copies of a copyright work should be the owner of the Canadian copyright, subject of course to the exceptions contained in the Act in favour of departments of Government, etc.

The publishers' section approves of clause 14 of the bill and of the principle of clause 15 of the bill, but suggests that the new enactment of section 27 (1) of the Act should be as follows:

"It shall not be lawful without the written consent of the owner of the copyright, or if the owner of the copyright has by license or otherwise granted the exclusive right to publish or sell any book in Canada, then without the written consent of such licenses, and except as provided in sub-section 2, to import into Canada, copies of such book, and such copies shall be deemed to be included in Schedule C to the Customs Tariff Act, 1907, and that schedule shall apply accordingly."

The publishers' section knows of no reason why a public library or institution of learning should have an unlimited right to import copies of a book after the book can be purchased in Canada.

The British Act contains no such right. The United States Act permits the importation for use but not for sale of one copy of a book at a time by such institutions.

Some similar limitations should apply in Canada and the publishers' section suggests that paragraph C of sub-section 2 of section 27 should be amended to read:

(c) At any time when a book is not purchasable in Canada to import any copies required for the use of any public library or institution of learning.

I perhaps should at this stage make it plain that the book publishers are not in conflict with the magazine publishers, and after hearing what was said yesterday, I am quite certain that the publishers' section would not object to some arrangement being made such as is desired by the magazine publishers; that is, for serial copyright. I would like to mention that at the outset.

Now, the objection which the publishers have to the licensing clause as it affects books—clause 13—is that it deprives the owner of the copyright of the freedom to deal with his right to his best advantage. One cannot consider this matter in theory; you have to consider the facts as they exist.

By Mr. Rinfret:

Q. You are dealing with the authors? I thought you said publishers. I think you meant the authors object to clause 13?—A. If you recognize the publishers whom I represent as acting for the authors.

By Mr. Lewis:

Q. You are dealing with the publishers, but your argument is one for the authors?—A. Because, as I say, their interests are identical. The ones I represent consider their interests are identical with the authors'.

By Mr. Rinfret:

Q. But they are not the printers?—A. No.

By Mr. Ladner:

Q. Does that include Ryerson?—A. No, because, according to this wire, they are in favour of these licensing clauses.

By Mr. Lewis:

Q. In what way would you consider the publishers and authors are identical?—A. Because the publisher ventures his money and enters into a contract on the strength of the copyright protection accorded to the author. Without that, he would be a mere trader in ordinary wares and merchandise.

Q. But without the clauses you would have to deal with the United States and not with Canada at all?—A. I was going to say that we have to face the facts, and I will explain to you, if I may, how that dealing takes place.

Q. Suppose you dealt with the authors through the United States rather than directly through Canada. In what way would that be beneficial to the Canadian author?—A. I will endeavour to explain that to you, if I may. The

Canadian author and his publisher are the only persons who are really concerned with the problem of bringing out a new book, and as you all know, every new book, with very few exceptions, is a great venture, and to make the risk worth while, the author must have the widest market he can obtain. He is fortunate in having—and has had before this Act was passed—a very large market in addition to his own; that is, the United States market. He has had for many years protection in that market for his books on the same terms as the American author.

By Mr. Ladner:

Q. He still has an advantage under the licensing clauses?—A. He still has it under the Act. We may consider it without the licensing clauses for the moment. He does not get his protection in the United States under our Act, but under theirs.

Q. But he is not deprived of any rights that he has?—A. No, and he already has his right under the Canadian Act. The point I want to make is this: The publishing of a book by a Canadian author is a great venture and is one that would hardly be taken on the strength of the Canadian market. The bulk of books are published in the English language and the entire population of Canada are not readers of books published in the English language. So, when you consider the market in Canada, it does not represent one-third of our population, but across the line the Canadian author has a very large population running into many millions. So that, in order to obtain a market for his book, he would wish to consider both Canada and the United States. Now, in Canada, he is not forced to print to protect his copyright. In the United States, he must print his book there within 60 days from its first appearance here in order to preserve his copyright, so that if he should print his book in Canada and then go to the United States within 60 days; which is almost simultaneous—he would be faced with a double cost of production which is quite unreasonable and is not the best course to expect any man to adopt. We cannot help that condition, however much we may disapprove of their law. The representatives of the Canadian authors or the Canadian authors themselves—are forced now to go to some American firm and make a bargain for their books, and if the American publisher takes it on—it has heretofore been on the condition that a Canadian edition will be purchased, either copies of the book, bound copies or sheets, or that the plate be purchased and a royalty paid on the copies printed in Canada. All these courses are adopted. This is the point where the shoe pinches. By the actual necessity of the facts of the case, the Canadian author must adopt that procedure whether you have a licensing clause in the bill or not. When the two parties are in negotiation, it is now presented to both of them that the Canadian market which the Canadian author is seeking to dispose of, as well as his American market, is threatened by licensing clauses in our Act; that, instead of his being able to say to the American publisher “I can sell you this work, both in my own country where I have a following and where I may sell a thousand or two or three or five thousand, and also in your country,” he cannot guarantee to that American publisher his own market, because unless it is printed in Canada as well, anyone at any time can apply for a license to print just a thousand copies on terms not to be made by the author, not to be made by the owner of the copyright who has given the author value for the Canadian copyrights, but to be made by the Minister. The licensee fixes the price he will publish the book for, and that is the point where the author is injured by his inability to make as good a bargain as he could before.

By Mr. Lewis:

Q. According to your argument, the American law does not protect the author at all; it protects the printer?—A. That is admitted. It is a manufac-

turing proposition, but they also have a market. They have a population of about 110 millions, and a possible market of 10 million or 20 million readers.

Q. Supposing I patent in Canada or Great Britain, or any other country; have I the right to go to any other country to sell my Canadian rights?—A. Yes; if you have the rights here,—

Q. Why should I? If I patent in Canada—and some years ago I patented a sanitary desk—A. Once you apply for it, but I think you are overlooking the fact that our law grants copyrights to an American author by the mere fact of his creating that work, whether he publishes it or keeps it in manuscript. The law gives him a copyright and annexes no conditions to it. Now, it is not a new question; it has been fought out for thirty years. Mr. Rose has spent most of the last generation in fighting for the manufacturing clause, but we could not have the benefit of international copyright; we could not have copyrights with Great Britain and other Dominions and with the countries of the Union until we dropped the manufacturing clauses. If we had no other part of the world to consider but ourselves and the United States, then we could vindicate the principle, with some restrictions, but we would starve our authors and drive them to the United States, because they could not live in Canada.

Q. Could they not sell their copyright to the United States?—A. If they have it, but remember they do not get their copyrights in the United States on the strength of our Act, but on a reciprocal arrangement. They would have to print there, and it would be problematical whether our new Act would be pleasing to the United States or not. It took Great Britain until 1891 to get protection in the United States for their authors. We have had it since then. Our protection simply rests on a presidential proclamation that we grant to American citizens copyright protection in Canada on substantially the same basis as to our own citizens.

By Mr. Ladner:

Would the licensing clauses interfere with that arrangement?—A. They have not interfered with that arrangement.

Q. The licensing clauses are not actually interfering with that arrangement?—A. They have not interfered with the present Act, because that has been accepted by the United States; it applies equally to United States and Canadian citizens.

Q. As I understand your point, the necessity of the author making the sale of his work in the United States causes you to make a deal less advantageous, because you cannot insure the Canadian market?—A. That is the point. It may be ethically wrong that he should go to the United States to make his bargain—

Q. I am not speaking of that. The fact is he gets a certain royalty from the market in the United States, and he also gets a certain royalty from Canada as well.—A. He gets a royalty from Canada as well.

Q. If the book is not published in Canada, then he is in the situation as though there were no licensing clause, as far as total revenue is concerned?—A. What should I understand by your saying, “not published in Canada”? Do you mean not circulated in Canada or not printed?

Q. Under the licensing clause some publisher can publish the book in Canada?—A. Yes, 1,000 copies.

Q. Their royalty would be based fairly in favour of the author?—A. Yes.

Q. Now, why could not these royalties be used as a contingency in making the deal with the American publisher, in this way. The American publisher can say “Well, we cannot give you such a good deal, because you cannot insure us the Canadian market.” The author can reply, “If you are interfered with in the Canadian market by some publisher publishing the work, I will be

receiving certain royalties and these will go into the general account and therefore, indirectly, you can obtain that advantage.”—A. He might make that bargain, but how would it affect the publisher on the other side, buying the rights? The publisher would say, “What is this royalty that I am to get, this royalty on at least 1,000 copies at a rate to be determined by the Minister?”

Q. Is there not some practice as far as the Minister is concerned? The Minister is not going to penalize the author.—A. The Minister will probably consider what is a fair royalty, paid according to the author’s prominence, and according to the nature of the book, but the Minister is not given any discretion to say, that this book shall be sold at \$2 instead of \$1, or that it shall be sold at any particular price, and the royalty is computed on the price. I am just asking you to consider the point of view of the publisher on the other side who is making a bargain with the Canadian author. It is quite true that something can be done—

Q. I want to know whether or not the revenues which would come from the book, if it were sufficiently prominent,—if it were not, no publisher would be interested in publishing in Canada. Therefore if it is an outstanding book and it was brought to Canada, it is to be presumed there would be substantial royalties, or some royalties anyway.—A. It is to be presumed so.

Q. Why could not these royalties which would come from the sale of the book in Canada as a result of this action by a Canadian publisher, be taken into account when the author makes his deal with the publisher on the other side, and in that way would not the author be indirectly protected?—A. They are not an adequate *quid pro quo*. I am giving my opinion only as to that. Your point is perfectly well taken, and the Canadian author might say, “If you are interfered with, I assign to you the royalties to which I would be entitled, if I am forced to grant a license.” But from the point of view of the publisher that is not adequate, because to begin with there is guarantee only of one thousand copies. Secondly, there is a very destructive competition with that publisher’s business in some stranger taking the book away from him and interfering with his trade, and there is no guarantee that the person who does that will even succeed, will have the qualifications or the necessary staff to sell the book to the same extent that a large publisher would.

Q. All these things are no guarantee, but it is to be presumed that a publisher, knowing his business, is not going on some wild goose chase?—A. We cannot assume that all publishers are the same, and we can hardly assume that one of the recognized publishers who has a goodwill from coast to coast and sends travellers around several times a year throughout the country is going to be the person who applies for a license; it is probably some one who thinks perhaps he can do a little business that way. That is what they fear, a sort of sniping attack on them.

By Mr. Chevrier:

Q. Isn’t the situation this, that no reputable or no very large publisher would ask for a license, but he would make a bargain of some kind; but the uncertainty—what interferes with the making of a bargain over in the United States with that publisher is the uncertainty of remuneration on this side. Take the license. This book is licensed by somebody with whom I cannot deal, who says, “I am going to take you by the back of the neck and force you into this thing”; he is not as reputable as one of these big publishers. Then the next thing, the publisher on the other side says to me, “Now look, where is the certainty of the remuneration on the other side of the line for me to make a bargain with you?” And I say, “I have no certainty, because there will only be 1,000 copies printed, or more, and then as my work has been interfered with, that is something that affects it, that prejudices it, and I do not know how they will

[Mr. George M. Kelley.]

print it or make it up." True, the Act says it may be fixed up in a similar way, but I have no guarantee of what this book will look like after it is licensed. Then the publisher says, "Put it on the table, let us see what your bargain is," and I cannot do it, because it is uncertain; there is a decrease in the value of my book.

By Mr. Irvine:

Q. May I ask the witness if, under these conditions, a Canadian author would be at any disadvantage in the American market as compared with an American author?—A. I would say he is immediately at a disadvantage the moment he tries to get his book published, unless it is in the case of a very prominent man like Professor Leacock, or someone whose works sell readily. The average author is forced to get a double market in order to get printed.

Q. Is the American author forced to get a double market?—A. No.

Q. And supposing I walk into a publisher in Chicago right now, what is the difference between my position with that publisher and the position of a man born in America with another book?—A. There is no difference between the two of you.

Q. Then do our authors want a protection in the American market greater than the American authors have?—A. No, they want protection in their own market.

Q. A Canadian author has the same chance in the American market as an American author?—A. I am not concerned with the position of an American author; I am thinking now of our own authors and publishers.

Q. Then the next question is, if our Canadian author in the American market has an equal position with an American author, is it not reasonable to suppose that if he has a book worth publishing, if it is a marketable proposition that an American publisher will accept his book as readily as that of an American author?—A. No, I would not grant that. An American author is so much better known in his own country than a Canadian, and naturally has a much larger following, so that the American author is in a vastly stronger position in his own country than a Canadian author. That is undoubtedly a fact.

By Mr. Ladner:

Q. I think what Mr. Irvine brought out is a very good point. You start in for a maximum market. The best market for the American author is the United States. He cannot get this market in Canada, although he does get it in a way, but if a Canadian could have the same maximum advantages as an American writer, do you not think in the practical working out that he is greatly prejudiced by not getting this additional market by the elimination of this licensing clause? Is that not bringing it to the degree of the infinitesimal?—A. I think the premise is wrong and that both authors are being penalized to a certain extent by these clauses; that is not justified.

Q. The United States Government having the interests of their own subjects at heart make their legislation and apparently expect everyone else to jump around to their tune. Is that not right?—A. Undoubtedly.

Q. And the action of this Parliament to-day, if we simply lay down before the American legislation, would be that we would be made a tool of the laws made in the United States.—A. Not any more than in the beginning, and not any more than it will be until we get a population big enough to fight the United States.

Q. In the realm of business, do you think that these licensing clauses would have a serious detrimental effect upon the revenues to the author, when he has the right of going in to the United States and selling his book and getting as much for it as the American author would get, because the American publisher really bases his deal upon the American market?—A. My clients think so, and

it is my opinion that the Canadian author is in a very inferior position going in to the United States. He is not known, and it is only in the north western states that the market is usually existant for his work.

By Mr. Irvine:

Q. Supposing John Jones writes a book in the United States and he is an American citizen and he is not well known, is that book not bought on its merit alone?—A. Yes, I think so.

Q. A Canadian would have just as good a chance?—A. Yes; I do not take any issue with what you say; I am talking from our point of view, where we feel we are being injured.

By Mr. Chevrier:

Q. Will you tell me this much; is it not a fact that the American people—and I deplore it very much—are very much more ready to read American literature than Canadian people are to read Canadian literature?—A. That would be my opinion, although I am not in a position to say so positively.

By Mr. Ladner:

Q. What proportion of the sales of all books, foreign and Canadian, in Canada, would comprise the Canadian sales? Have you that information?—A. I have not that, but I know the details are available.

Q. Has the information ever come to your mind—can you give any approximation of the sales? Would it be one in ten thousand?—A. That is much too diluted. We have a number of Canadian authors who have a reasonably large sale and a large sale in the United States as well, but of the hundreds of new books coming into the country every year, I know quite a small percentage of those would be by Canadian authors.

Q. Have you any information on the number of books that come in from the United States?—A. I think some gentlemen here have that information.

By Mr. Rinfret:

Q. Is there any reciprocity of treatment between the two countries?—A. Yes, there is complete reciprocity.

Q. Supposing we maintain this clause in our Act, would a similar clause apply in the United States against our own authors?—A. They have not this clause in their Act now.

Q. But is it not to be feared that the United States would adopt similar legislation which would apply the same restrictions in the United States?—A. If our authors became sufficiently known it might be.

Q. If they go to the United States, they would be under the threat of not being printed in Canada, and if they stayed in this country similar treatment might apply in the United States, and we would have started it all by these clauses?—A. These clauses are a novelty in copyright legislation anyway.

Q. What is the average of the royalties paid to the authors in the case of a book?—A. The average runs from ten per cent up, on new books.

Q. Is it not a fact that if you have a book printed in the United States and it is reprinted in Canada through a license, that ten per cent is swallowed up in the cost of the reprinting of the book?—A. I could not answer that; the author would be entitled to something, but it would be reduced greatly.

Q. It was argued just half an hour ago that an author might make a bargain with a printer in the United States that if he got any royalty from Canada through a printer here obtaining a license, he could abandon that in favour of the United States publisher.—A. Yes.

Q. That does not take into consideration the cost of reprinting the book?—A. No; usually the bargain is that the author gets a percentage of the net receipts.

Q. In other words, if 1,000 books were sold in Canada of the reprinted edition, and 1,000 fewer books sold of the edition printed in the United States, that royalty could not by any means compensate for the loss to the first printer?—A. I think that is arguable; that may be so.

Q. Instead of selling 1,000 more books in Canada the printer in the United States only gets the royalty. That would not be a compensation?—A. No.

Q. Therefore the author could not enter that in the bargain to his advantage; that would be rather a handicap.—A. That was what I suggested, that it was not an adequate consideration.

By Mr. Ladner:

Q. I think the real point that we as a committee would have to consider is this; we have on the one hand large and influential interests concerned and affected by this legislation. In the ordinary manner in which publishers and authors deal with each other, the relation to each other and so on, do you think in actual business that the author would get less money by reason of these licensing clauses in making his deal with the American publisher?—A. I am sure of it, if these licensing clauses were taken advantage of. I am sure he would get less money.

Q. Than if he lived in the States?—A. No, I was not talking of that.

Q. How would he get less money than he would receive by getting full rights in America?—A. We are talking now of the Canadian market, surely.

Q. No, it is apparently the American market that counts.—A. Yes, the American market counts, but the Canadian market is of value to the Canadian author.

Q. I think you will agree with me that 95 per cent of the market is on the American side?—A. A large population on the other side.

Q. Here is an American publisher sitting in with an author and making a deal with him. Do you actually think that the publisher would give him less money because of these licensing clauses?—A. I am sure he would, if the licensing clauses ever got into operation. He would give him less money to the extent of the Canadian market.

Q. Well now, the publisher wanting to get his books, and wishing to make a deal with that author, say a Canadian author or an American author, the American author would not have any more advantage than the Canadian?—A. No, he would have no more advantage.

Q. They are on an equal plane?—A. They are on an equal plane, but the fact that they are on an equal plane does not remove the hardships on the Canadian.

Mr. CHEVRIER: That is the point.

By Mr. Ladner:

Q. But is it a hardship? On what knowledge do you base the statement that the Canadian author would get less money under the circumstances?—A. Because instead of having an absolute right to trade, he has a contingent right.

Q. So has the American author?—A. True, I am not arguing about the American author; I am only arguing the case for the Canadian author.

Q. Is it not simply a matter of demand and supply and that that is the determining factor?—A. They are on the same plane.

Q. The American publisher has before him an American author and a Canadian author?—A. Yes.

Q. Do you think that the price he would give for the work under these conditions would be affected by this legislation in Canada?—A. I am sure they would be both affected.

Q. On what knowledge do you base that statement?—A. On the Act and on how it must work. An American author goes to his publisher and says, "I have produced this book, and I am willing to sell the rights for the United States and Canada." The publisher says, "Well, the Canadian Act forces us to print there, therefore I cannot give you so much for the Canadian rights as I otherwise would." Any business man would be forced to take that position. That is the reason. You are quite right, they are both on a complete parallel, the American author and the Canadian author.

Q. If you eliminate these clauses, then not only the American publishers, but the American author is put in a more advantageous position?—A. Yes, he is put in a more advantageous position, and so is the Canadian; it puts them both in a more advantageous position.

Q. You are giving a greater advantage to the printer, the publisher, the workman and other interests on the other side and lessening our own advantages, are you not?—A. That might be an argument, but remember, I was not making an issue of whether it was preferable to print in Canada or not. As an abstract question, most people would feel that we would like to print everything we possibly can here. I was stating the case on the facts as they exist.

By Mr. Irvine:

Q. Does it make any difference to the interests which you represent whether a book is printed in Canada or not?—A. They would prefer to print it in Canada. They prefer to print in Canada because they get more complete control of the book. It is better for them to print in Canada. When a book is sufficiently in demand here, they do. All those gentlemen who have appeared before you as printers and publishers will print in Canada when they feel justified in doing so. Mr. Appleton prefers to print in Canada whenever it is commercially profitable to do so. When it is not, he imports from Great Britain and from the United States.

Q. Your chief work is to sell the book?—A. Well, I have drawn a great many agreements between authors and the publishers whom I represent, not the Ryerson Press and not Mr. Appleton's—agreements with Western authors like Miss Nellie McClung, for instance. The publisher takes the financial risk of bringing out the book and in order to get publication and to secure the author's royalty he would order a very considerable number of copies from the United States. These are the interests that I represent and that is why I say they are identical with the authors', so far as copyright is concerned.

Q. So that one of these publishers might make an arrangement with a Canadian author and go to the United States and dicker with other publishers there for publication in the United States?—A. The author could not possibly do it because the author could not agree to buy any copies. He could not agree to the purchase.

Q. It does not make any difference to those people whether it is printed in the United States or in Canada?—A. I do not believe so. I have been informed by Mr. Appleton that it was more profitable to them to produce a book here if it was a book that would sell in sufficient quantities. It is entirely determined by that factor. Publishers could not do business with half a dozen "best sellers"; they must have scores or even hundreds of titles. They have to publish in quantities. Of course, the conflict is entirely apart from the main concept of the bill. You may consider this simply a counsel of perfection when I say that the Copyright Act was designed for authors and not for any other person. The authors may, or may not, owe a duty to the printer. The conflict now is with the printers who contend that as a condition of getting the copyright privilege, the authors

[Mr. George M. Kelley.]

should to a certain extent carry them. Well, I am not arguing that one way or the other, but that is what a great deal of the discussion hinges on, whether the printers have a right to insist on the authors doing this or not.

By Mr. Ladner:

Q. Do you not think that once you pass a law, just as in banking, or in anything else, creating certain rights and privileges and affording certain protection of rights to certain people, whether authors or not, you have to take into consideration the interests of the public generally and all other kinds of interests?—A. That is true.

Q. When you do that, it becomes a concern of the public?—A. That is true.

Mr. LADNER: That is another point.

By Mr. Chevrier:

Q. What is the answer?—A. The answer to that is simply this: we can perhaps consider the views of people of more experience and greater wisdom on the subject than ours. In other words, we would refer to the legislation of countries where they have developed the copyright law and perfected it in the way presumably that we are seeking to adopt.

By Mr. Ladner:

Q. We are on the North American continent, the United States and Canada; we are identical in language and so forth, and just as in matters of tariff and other questions—A. I think that is admitted. You cannot make water run up a hill, and you cannot in the book publishing business depend on this market alone.

Q. Apart from the material side of the question do you not think that the licensing system will tend more towards developing the interest of authors and writers in the national life of Canada? If you eliminate the licensing system and encourage the authors to go to the United States to sell their books, do you not think that it is going to cause the authors and writers to confine their conceptions, their ideals or their propaganda to a United States point of view?

Mr. CHEVRIER: Are Canadian authors not patriotic enough to do that themselves, without being kicked into it.

By Mr. Ladner:

Q. It is a question of supply and demand. They must either concede to the demands of the consumer, or not do business with them?—A. That is true. I think that question might be answered in this way: That the author will no doubt write according to his public, and I would think it would benefit him. But if the licensing provisions go into effect I think they will undoubtedly benefit the printer and the manufacturer.

Q. That was not my question. Would not the licensing system tending, as it does, to cause the printing of a book in Canada and to develop the Canadian market, help in causing authors and writers to work out an ideal in their books that would appeal more to the national life and spirit of the Canadian people than if you eliminated it?—A. If the Spartan system of bringing up children is to prevail, it would. The author then cannot nurse his book and select his publisher and assist it in any way he desires. If the licensing clauses are enforced, it is taken away from him and some stranger advertises his book—if you think that that would be beneficial to the author—I cannot see how it would be—I do not think it would develop a national spirit; I think it would be rather a strangulation and cause him to neglect the Canadian field and make him feel that the only field in which he could control his property would be the United States or Great Britain or other English speaking countries.

Q. If he were only printing his books in Canada, he would naturally write to appeal to the Canadian people, to appeal to the national interests of this country?—A. True.

Q. Now, under the licensing system, would not many of these authors be induced to write from that point of view and so develop the authors' work in Canada rather than have them go to the United States?—A. It might, but would not a wise author endeavour to build up his reputation by local colour or by depicting conditions with which he is familiar? Might not that be the special appeal that his book would have in Great Britain, say? That is what happened in the case of "Maria Chapdelaine." Such a book is more valuable than those which appear to-day and are forgotten next year. I think that is what a Canadian author should aim at.

Q. The reason I am asking these questions is, yesterday I travelled on the train with an author of some note, and he showed me a letter from a publisher in the United States suggesting that the plot and colouring of his book should be changed and that it should not reflect the Canadian spirit. The publisher required the American spirit because the market for the book was in the United States. This author informed me that he was anxious to stand by his plot and colouring but that he was not able to do so very well. He said, "I have to change the colouring and the plot of the book to place it in the American market and deal with American ideals and American conceptions because the publishers there say I must do so."—A. As against that, one might instance the very popular author named James Oliver Curwood who has gained his popularity on the strength of depicting life in our Northwestern provinces. The American public like it if it is well done, and if the Canadian author would master the conditions under which he lives and depict the life of his country, I am sure he would be quite as good a seller as if he attempts to understand or depict American conditions.

By Mr. Irvine:

Q. That means that if a Canadian author sold well in Canada he would likely find a very good market in the United States?—A. And all over the world.

Q. Therefore, if you follow Mr. Ladner's argument, it would work out satisfactorily because it is art, after all, that the author is selling?—A. That is true; art is the basis and knowledge of his subject.

By the Chairman:

Q. Do you think it would be possible to make a distinction and maintain it as between the copyright of serials for magazines and of books?—A. I am convinced it would be quite possible to do so. The magazine trade of the country seems to stand in an entirely different position from that of books. I was very much impressed by what was said here yesterday on that point by Mr. Harrison and by Mr. McKenzie.

Q. It is quite a different point of view from the point of view of the book public?—A. Absolutely different. May I say a word or two now as to importation?

MR. CHEVRIER: Before you deal with that I would like to put this question: suppose I write a theological book, or suppose I write a book on a religious subject, very highly complicated or suppose that Mr. Irvine writes a book on a theological subject—I could not do it—with very great care and attention, and he gives an explanation of some principle, and he very reluctantly throws that book into the United States market. It has quite a demand and obtains a large circulation. Suppose Mr. Dan Rose gets a license and licenses Mr. Irvine's book in Canada. He becomes the sole owner of that book for five

[Mr. George M. Kelley.]

years. Suppose that two years hence Mr. Irvine having matured his views, finds that the theological principle which he expounded in his book is not in accordance with the new light and he wants to modify that book, to change it, to recall it; how could he, under subsection 5 of section 13 recall his book from the market, or destroy it?

WITNESS: He could suppress the book, could he not, by purchasing the copies from Mr. Rose?

By Mr. Chevrier:

Q. He could go and buy up every copy?—A. Yes.

MR. IRVINE: How could you perform this wonderful feat if these licensing clauses were repealed?

MR. CHEVRIER: In the meantime you have lost all control of your book. You have given away all your rights. You have lost all control of it.

THE CHAIRMAN: I think we had better hear the other statement that Mr. Kelley has to make.

WITNESS: Regarding importation, which is the second part of that resolution that I brought forward, I do not think there can be anything controversial. Mr. Haydon suggested, the amending of paragraph (d), on the assumption that the Act would not be altered, that the licensing clauses would remain. I quite approve of his amendment in these circumstances which would restrict the right to import one copy of a book. The resolution which I am submitting to you is based on the assumption that Parliament may pass this present bill and may repeal the licensing clauses, and in that case, there is a necessity that section 27 should be altered in accordance with the resolution; so that only the owner of the copyright may be permitted to import copies. At the present time, for some reason with which I am not familiar, although I was present at the meeting of the Committee at which this resolution was concerted, permission was given to Great Britain and the Unionist countries to import copies of a book notwithstanding that a license was granted here, and the section goes on to say, "Notwithstanding anything in the Act." So a case might arise where someone having dealt with the author and purchased the right in Canada might find that his stock of books was being competed with by books brought in from England or continental countries. That has occurred in the past year, and it has caused a great deal of concern to the publisher who wished to have the law qualified in that respect. They feel that all interests, printing interests, and authors' interests are alike in not allowing anyone but the proprietor of the copyright to import copies into the country. Then as to the amendment of the clause regarding libraries and institutions of learning, in the bill; they are given an unlimited right to import. That right ought to be limited certainly to their own use. There might be institutions of learning which would import many copies of books and sell them to their students. There can be no reason why they should enjoy that privilege. If books can be purchased in Canada, it is only right that institutions in Canada should purchase from the Canadian rather than from the foreign publishers. The publishers' section wished me to urge strongly this view upon you, and ask you to bear it in mind when considering the importation clauses. I thank you for your attention.

Witness retired.

ALFRED E. THOMPSON called and sworn.

By the Chairman:

Q. Whom do you represent?—A. I am the Canadian representative for the International Typographical Union in Canada.

[Mr. George M. Kelley.]

By Mr. Chevrier:

Q. Where are you from?—A. Toronto, Canada; born in Toronto, Canada. I represent the printers in Canada.

By the Chairman:

Q. Mr. Haydon represented the same interests?—A. Yes, practically the same interests. My whole desire in coming here is merely to express the views of the labour men working in the printing industry, the sole desire, of course, being to keep all the work we can within the Dominion of Canada to benefit our working men. I have a little report here which I will read:

The part or sections of the Copyright Act that interest those who work at the printing industry the most is the licensing clauses, and in speaking for organized labour in Canada desire to inform you that we are strongly of the opinion that no alteration or amendments are necessary at the present time to alter the effect of the licensing clauses as at present exist.

This Act has been in operation but a very short time and we can see no reason why it should be altered, believing that the Act is beneficial to all concerned, at least, it is giving employment to Canadian workmen in general.

This Act has been working satisfactorily and we are of the opinion that the cancelling of the licensing clauses will simply mean the diversion of more printing to the United States, throwing out of employment good Canadian workmen and forcing them to migrate, something that no true Canadian desires to see.

Everybody must realize the great unemployment question in this country, and we do not want to think that it is the desire of this Parliament to add to the already acute unemployment situation.

If any man is game enough to apply for a license to publish a book in Canada, guaranteeing the author his royalty and helping toward employing Canadian workmen, we do not think it is very good politics for members of Parliament to take that power out of his hands.

Our main desire is to build up the printing industry in this country and make employment for Canadians. The United States are quite capable of looking after their own interests; but it seems to us that the general trend is to divert all our work across the line, as at the present time four-fifths of the periodicals read in Canada are printed in the United States.

In the last 2 years over 300 printers were forced to go to the United States from Toronto alone to seek employment, owing to the stagnation of the printing industry.

In conclusion we urge that the present law, as far as the licensing clauses are concerned, remain in force, and that no alterations or amendments be made that will in any particular nullify these sections of the Act.

Mr. CHEVRIER: I have no questions to ask, Mr. Chairman.

The CHAIRMAN: Has anyone any questions he wishes to ask Mr. Thompson?

The witness retired.

LOUVIGNY DE MONTIGNY called and sworn.

The WITNESS: Mr. Chairman and Gentlemen; I have been requested by the authors to give you a little information in order to implement some data on points which were raised yesterday, especially on the question of the pressure which could be brought to bear on the authors by the licensing clauses. I have prepared a brief statement of this which I will read to you. I beg to appear as one of the councillors of the Canadian Authors' Association. I am an author myself.

[Mr. Alfred E. Thompson.]

Mr. Lawrence Burpee, president general of the Canadian Authors' Association, and Mr. J. Murray Gibbon, former president general and founder of the Canadian Authors' Association, have accurately exposed to your Committee the main principles which animate the Canadian authors in urging Parliament to repeal the licensing clauses now incorporated into our Copyright Act. On the other hand, the representatives of magazine publishers and printers have not failed to show what interest they certainly have in desiring the retention of these licensing clauses in our statute. They have gone so far as to endeavour to demonstrate that such licensing system enables the publisher to take care of the authors, notwithstanding the fact that the authors claim the right of managing their own affairs.

On behalf of the manufacturers, Mr. Appleton has stated here that the licensing clauses work solely against the American author and the American publisher. Manufacturers and printers seem to be hand in hand with the typesetters to lead your Committee into believing that the Canadian author is exposed to no hardship by the working of this compulsory licensing system.

I appear to call the attention of your Committee to this single fact that, up to now, every case which has been presented to your Committee related to the best Canadian authors who have secured business relations with the publishers. I need produce no census statistics to demonstrate to your Committee that these well known Canadian writers constitute but a very small proportion of the whole class of authors, artists and music composers, for whose behalf this Canadian legislation is enacted and against whom the licensing system actually operates. Your Committee should not overlook that the expression 'book' as defined in section 2 of our Copyright Act, does not merely mean a volume, but as well a part of a volume, a pamphlet, a sheet of letterpress, a sheet of music, a map, a chart and even a plan.

Then, the greater number of Canadian authors, especially the beginners in the literary or artistic career, have no publisher to attend to the marketing of their works. They themselves have to look to the printing and to the publishing, and pay the printer cash on delivery. The printer is no more interested outside of being paid for his job.

It is only after the author has gone to the expense of printing, publishing and advertising his first works, and after he has gained some renown, that he can enter into relations with a publisher who then will take the risks of publishing, if he thinks it worth it.

So, the licensing system, inasmuch as it enacts that the author must print his book in Canada at any cost, puts the great majority of Canadian writers at the mercy of the printer.

I would beg to be allowed to quote my personal case. I have so far published only one book, for the reason that the printing of that book cost me \$900. I have travelled in England and in France, and I can state here that I could have had the same book printed in Europe for one-quarter of what it cost me to have it printed in Canada. I would then have been able to sell my book for about 40 or 50 cents and make some profit out of it. On account of the price of the printing, this book had to be sold for \$1 a copy, not to bring me any profit, but only to cover expenses.

Under such circumstances, I think it is not an exaggeration to argue that the licensing system, in forcing an author to print his work in Canada at any cost, has for ultimate result to make the public pay too high a price for a Canadian book, and therefore to prevent the public from buying more Canadian books. I submit that it is not necessary that any great length of time should elapse to show that such a practice is prejudicial to the interests of Canadian authors.

The manufacturers and printers have clearly shown that the Licensing clauses are profitable to them. It goes without saying that the profits accruing

[Mr. Louvigny de Montigny.]

to them, under these clauses, is to be taken out of someone—and that is to say from the author and the general public. Moreover, the manufacturers are not satisfied with the licensing clauses as they stand now, but they have already submitted to your Committee further amendments which will make this licensing system a greater hardship yet to the author. Such compulsory regime is claimed for the avowed purpose of helping the printer and the type-setter. The printer needs no legislation to force the Canadian author to print his book in Canada. As long as the printer is reasonable in his terms, it is all to the Canadian author's advantage to have his book printed in Canada. But where the printer is not reasonable, the author wants to retain the right of having his work printed where he can secure better facilities. As Professor Stephen Leacock put it, the licensing system allows the printer to take the author by the neck. In none of the 35 civilized countries that form the Union to which Canada belongs, is such state of servitude made for the author.

I beg your Committee to consider whether or not such a licensing system is not tantamount to a monopoly which the printers ask Parliament to legalize for themselves, to the detriment of the Canadian author.

The printers and manufacturers emphasize the fact that no hardship has been caused to the author. We respectfully submit that this compulsory legislation constitutes a permanent hardship obviously detrimental to the Canadian author, artist and composer, and, above all, discourages him from following the career to which his natural talents direct and lead him.

Now, I would like to be allowed to refer to Mr. Ladner, who raised the point that an American publisher might approach a Canadian author and attempt to secure his talent for the exclusive use of the American market. That, of course, would mean the abandonment of the cultivation of the Canadian literary vein. Possibly, he could find someone who would write anything at all for money, but I wish to talk about the decent authors who realize that the big asset is to write on Canadian things for the Canadian people. In this young country of ours we do not pretend to have the literary skill and attainments that exist in the old countries of England and France, with their centuries of endeavour behind them; we cannot compete with them on that subject at all, but we can be strong in developing our own maple leaf. So I, for one, if an American publisher comes to me and wishes me to write a book for the American people, would refuse. Perhaps I could do that and make a profit, but if I do that, it is taking away from my value to Canada, and I claim that putting the real Canadian spirit in my book will make it of greater value, both to me and to my country, than I would possibly derive by writing a book for American consumption. If you take the average Canadian author, I am sure you will find that he would prefer to stick to his own country.

But the big point is that he should be allowed to choose the place where his book should be produced. If he can write a book and get it published and sold abroad, he is advertising not only himself but his country, and so doing a service to both. Let us take the Canadian author Paul Morin, who has published in Paris a volume of poems "*Le Paon d'email*." This edition ran, as far as I know, to about 4,000 copies, all being sold in France, because it appeals to the French people rather than to Canadians. When it was brought to Canada, very few copies were sold: it seemed that the Canadian people did not appreciate or did not care for it. I could quote you the names of about 25 French-Canadian poets who have had the same experience. What is true for them is just as true in the case of English-Canadian poets. There is no one Canadian poet who could write a book of verse in Canada and be sure of selling 300 copies, while if he went to where the market exists, he could sell 2,000 or 3,000 copies.

Take our own case, right here in Canada. The book "*Maria Chapdelaine*" by Louis Hémon, was edited by myself back in 1916, with nice illustrations by a Canadian artist. There were 1,200 copies of that book printed, and

[Mr. Louvigny de Montigny.]

only about 500 sold. Five or six years after that, the French people happened to see some of the copies and they made a re-edition in France. Only one man, Grasset had it, and it sold over one million copies. That shows that we have to choose our own markets.

By Mr. Ladner:

Q. Why do you say this legislation obliges the Canadian author to have his book printed in Canada?—A. It obliges him to.

Q. You say the publisher and printer has the author by the neck, figuratively speaking?—A. Yes.

Q. That is a fine expression.—A. It is not mine, it is Stephen Leacock's.

Q. You say the author must print his book in Canada?—A. Yes.

Q. Do you think that is a proper statement of the fact?—A. Yes, when it is licensed.

Q. Why can he not have it printed in England?—A. Because the law prevents him. I cannot have my book printed in England or in France, and afterwards import, into Canada, to sell it here, by edition which might have been made at better terms in these countries, because the license clauses of our Copyright Act now prevent me from importing my own edition, if it is made outside of Canada. As I have said, the main object of this licensing system is to create a monopoly for the Canadian printer, in deterring all competition which would compel him to be reasonable towards the author.

Q. But do you not see the point; if you can print a book in England for one-quarter of what you print it for here, you are not prohibited from selling it here.—A. Yes, the license would prevent me from selling my own edition in Canada. For five years it would be barred; I am prevented through the license from importing one single copy of my personal edition.

Q. Under the law as it stands now, I thought the amendments were being asked so that these people could import these books. Under section 26 you can import any book lawfully printed in the United Kingdom.—A. Not when it is licensed. Section 13 specifies that when a man has a license—.

Q. I do not know whether the other members are clear on this, but I am not.

Mr. CHEVRIER: I am clear on it.

Discussion followed.

The witness retired.

The Committee on motion of Mr. Chevrier then adjourned until Friday, March 13, at 10.30 a.m.

FRIDAY, March 13, 1925.

The Special Committee appointed to consider Bill No. 2, an Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Hoey, Irvine, Ladner, Lewis, McKay, Prevost, and Rinfret.

In attendance:—Mr. Geo. F. O'Halloran, Commissioner of Patents and Copyrights.

The CHAIRMAN: There is a telegram from Winnipeg which I will ask the Clerk to read.

The CLERK: (Reads)—

[Mr. Louvigny de Montigny.]

WINNIPEG, MAN., March 9, 1925.

Chairman, Committee on Bill No. 2,
House of Commons, Ottawa, Ont.

Associated Radio of Manitoba representing all radio interests protest against royalties for broadcasting copyright music, broadcasting becoming public service to farmers and others in prairie provinces. Proposals in Bill Number 2 will restrict service and retard usefulness of radio art. Service generally free should not be taxed. Broadcasts of copyright music is advertisement and benefit to persons originating copyrights. Considerable feeling developing against proposals as Bill becomes known.

(Sgd.) J. H. CURLE,

Secretary.

The CHAIRMAN: The next order of business is the taking of evidence. I would suggest to members of the Committee that while any gentleman is giving evidence he be not interrupted until he has made his statement. Then hon. members will be at perfect liberty to ask any questions. I think you will agree with me that if this rule is rigidly adhered to we will get through with much greater rapidity. After the evidence has been heard, we will have ample opportunity for discussion as between members of the Committee. I hope that this suggestion will meet with the approval of the Committee and be followed.

Mr. CHEVRIER: Before we proceed with the evidence, a motion was carried at a previous meeting to have 300 copies of the evidence printed. I respectfully submit that 300 copies will not be sufficient, and I therefore move that an additional 100 copies be printed.

Dr. McKAY: Seconded.

Motion agreed to.

EVIDENCE

EDGAR M. BERLINER called and sworn.

The WITNESS: Mr. Chairman and gentlemen, I represent the Victor Talking Machine Company of Canada, Limited, one of the manufacturers of records in Canada, and consequently interested in Bill No. 2 and in all matters relating to copyright in so far as they relate to musical work and mechanical reproduction. I am also a member of the organization of record manufacturers and in a sense representative of them all. I wish to say at the outset that Mr. Robertson is here. He is really the representative of five record manufacturers of Canada; and if the Chairman would be good enough to give me permission when matters of a very technical or legal nature come up in connection with this to refer to him I should be obliged. The matter of copyright is very intricate, and it is very difficult for a layman to understand the legal features of it.

Mr. Chairman and gentlemen, I have here a memorandum, a copy of which I have submitted to you, in regard to Bill No. 2. This memorandum contains a list of amendments that we wish to press; that is, the representatives of the record industry. If these amendments are accepted by the Committee and by Parliament, the record makers express their full approval of the legislation as it affects their industry. If you refer to the first item of the memorandum:

"(A) That section 3 in Bill 2 be cancelled," you will see that this section refers to the term of copyright in records and rolls. Later on you will see that this is fixed up in section 7. It constitutes no change to the present status.

(B) That section 4 in Bill 2 be amended by striking out in line 19 thereof the words "and completely".

[Mr. Edgar M. Berliner.]

This refers to the placing of the composer's name on a mechanical contrivance such as a record. If you are familiar with the labels on records, you will know that they contain a great deal of information; and it has been the policy of the record manufacturers to put the name of the composer on the record. We have done that without being obliged to do it. The words "and completely" make it necessary to leave nothing out, and if we leave out his first name or an initial, we might be susceptible to all sorts of penalties. So we ask that the words "and completely" be left out; merely leaving us to put in his name which we are agreeable to do.

I did not make it as clear at the outset as I might have done that the record manufacturers have discussed this whole matter with the proposal of Bill No. 2, and I think I am correct in saying that the memorandum which I am presenting really represents a final settlement of this matter between us—nothing in the way of a compromise. But there are things that are to be said for both sides; and we hope that the proposer of Bill No. 2 will accept these amendments and that they will constitute a final settlement between us. Once this thing is settled, there will be no occasion for it coming up again. I should have stated that at the outset to make the matter a little clearer.

By Mr. Chevrier:

Q. That refers to section 4 of the Bill?—A. Yes, sir, you will find that in line 19 of the bill.

Q. That is your amendment?—A. Yes, sir.

Q. There is a lot of reason in that?—A. In the past we have always been given credit for doing it. There are 10,000 different records selections, and we would have to print 10,000 new sets of labels and 10,000 electros, which would involve considerable expense.

MR. CHEVRIER: So far as I am concerned, we desire to meet the legitimate demands of anyone, in the hope that our legitimate demands will be met in the same spirit. I think that is only fair. I agree to this in the hope that anything which I submit and which is fair will be agreed to in the same spirit by the other side.

THE CHAIRMAN: I think you will find Mr. Berliner that the desire of the Committee is to agree to any proposal that seems to be fair and that will make the Bill more practicable and useful.

THE WITNESS: We have had a little experience with copyright and I realize that we cannot have everything our own way. But these are reasonable requests by people who are interested in this matter. I may say that in making our requests we have tried not to take advantage but only to ask what is reasonable and practicable in regard to the carrying on of our business.

MR. O'HALLORAN: I would suggest that it would be well to have an opportunity of considering these amendments before coming to any conclusion. They are very important.

THE CHAIRMAN: We are not amending the bill at the present time; the Committee is simply considering amendments proposed by the witness.

DR. MCKAY: I thought Mr. Chairman that we were to hear the witness' statement before asking questions.

THE CHAIRMAN: I think that would be the best procedure.

THE WITNESS: Item C reads:—

That section 7 in Bill 2 be cancelled and that the following be substituted therefor:

7. (1) That section eighteen of the said Act is amended by striking out the words "literary" and "dramatic" wherever they appear therein.

I will take the different clauses, one at a time. It was thought by the framer of Bill No. 2 that this would be a contravention or violation of the articles of the Berne Convention; and although it is really something against us, we want to be fair in the matter, and so we agreed to this change in so far as it affects mechanical contrivances by striking out the words "literary" and "dramatic." It is not a fact that it would be a violation of the Berne Convention. We do not want to have Canada in the position where it would be enacting legislation that would be a violation of it.

Now we come to section (2).

That section eighteen of the said Act is amended by adding to section eighteen (2) the following:—

Provided that no royalties shall be payable in Canada on records exported to countries where copyright royalties are collected:

As you are aware, the present Act calls for a royalty of 2 cents for the surface of a record, and it was proposed in Bill No. 2 to change that royalty from a flat rate to a percentage basis. We argued with the framer of Bill No. 2 that a percentage basis would tend towards great complications and that the flat rate tended towards simplicity. After considerable argument, I think we made that point clear and it was agreed upon. Records are sold at all sorts of prices, and a flat rate for everything seems to be the simpler form.

As to no royalties being paid in Canada on records exported to countries where copyright royalties are collected, but for that provision, a Canadian manufacturer shipping his goods to a country where copyright royalties are collected on mechanical contrivances would be subject to two royalties, a Canadian royalty, and a royalty in the country in which another royalty would be collected. In that way, he would be at a great disadvantage compared with the record manufacturer in that foreign country. I know a little of the past history of this legislation, and my recollection is that it was never the intention of the Government, when it presented the original copyright Bill. In fact, I do not think—I think it was so stated at the time, though I am not sure—I do not want to make this statement as being absolutely certain—but my recollection is that Mr. Doherty said there was no intention of imposing such a condition. That is my recollection of it, but I want to say that while I believe that to be correct, I am not positive. At any rate, the idea is not to place the Canadian manufacturers at a disadvantage as compared with the manufacturers in a foreign country; in other words, not to have the Canadian manufacturer pay two royalties. This has to do with the first item, "That no royalties shall be payable in Canada on records exported to countries where copyright royalties are collected."

Then the memorandum goes on

And provided further that if this Act is or has been extended to any country by virtue of the provisions of Section 4 (2) then authors of compositions, who at the date of publication thereof were subjects or citizens of such country and were not effectively domiciled in one of the countries adhering to the revised Berne Convention or their heirs, assigns, successors or legal representatives, shall be entitled to copyright protection only under the following conditions:—

(a) That payment of royalties shall be regarded as made in full when 90 per cent of the amounts due under this Act have been paid;"

Now, Mr. Chairman and Gentlemen, I want to make it quite clear that this refers in particular to the United States. In a moment I shall refer to the

[Mr. Edgar M. Berliner.]

proclamation with regard to Canadian citizens issued on December 27, 1923 by President Coolidge of the United States just before our copyright law went into effect with regard to the item I have just read as to the payment of 90 per cent of the royalties, that is a custom of the publishers in the United States. That is a general trade custom, a reduction of the royalty that is extended to all reputable manufacturers. The intention here is that inasmuch as so many of our compositions in Canada are controlled by American houses, at least Canadians shall be treated as well by those publishers, as the publishers in the United States treat their own record manufacturers. I do not know that it is necessary for me to say that a wise copyright law is for the protection of composers and others, so far as musical compositions are concerned. As I have said, the custom of the publishers in the United States is to grant this 10 per cent reduction to the record manufacturers and we ask that they do as well for us in Canada as they do for their own citizens.

(b) That the provisions of this Act in so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically musical works shall apply only to compositions published on or after January 1, 1924, and registered for copyright in Canada.

I have here a copy of the proclamation of President Coolidge issued just before the coming into effect on January 1, 1924 of our Act. I refer you to the last paragraph of that proclamation. This has to do only with the rights of Canadian citizens. I am reading from the proclamation itself.

And provided further that the provisions of section 1 (e) of the Act of March 4, 1909, in so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically musical works shall apply only to compositions published on or after January 1, 1924, and registered for copyright in the United States.

I want to make it clear that we have virtually copied the wording of that Act, and that all we are asking you to do is to give to American citizens the same rights as they give to Canadian citizens. We are not asking that you give them any more, but we feel our citizens are entitled to no less than the Americans are willing to give us.

Section (3):

That section 18 of the said Act is amended by adding after section 18, subsection (6) (c), the following:

18 (6) The repeal of the words "literary" and "dramatic" wherever they appear in section 18 of this Act shall not affect the right to continue the manufacture on complying with other regulations of works which were manufactured before the passing of this amendment.

You will recall that in paragraph (c) I referred to the deletion of the words "literary" and "dramatic". Well, by agreeing to that we have limited our rights with respect to the recording of literary works; a poem for example—a verse of any kind. Well, what we want to secure there is that, insofar as the past is concerned, that is anything we have recorded up to now, it shall not be an infringement of a copyright for us to continue to press records from such recording, provided, of course, we comply with all the conditions of the Act, payment of royalties, etc., etc. In other words, we do not want to have it affect what we have already done. By giving up our rights, we do not want to make it impossible for us to press records from recordings we have made in the past.

Section (4):—

That section 18 of the said Act is amended by adding immediately after 18, subsection 7, the following subsection:—

[Mr. Edgar M. Berliner.]

18 (8). In case of the failure of the manufacturer to pay the copyright owner or legal assignee the full sum of royalties due, according to the present section and to the regulations made thereunder, within 60 days after demand in writing, the court may award taxable costs to the plaintiff and a reasonable counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this Act, not exceeding three times that amount.

I want to make it clear that is a matter of penalty. It is simply a case of having a demand for the royalties, and frankly, as far as my own company is concerned, we have endeavoured to comply with the Act. We have no real objection to reasonable penalties, provided the companies are naturally and honestly endeavouring to carry out the terms of this Act, that would not be penalized by accident or otherwise. We are ready to agree with the proposer of this Act because, as I say, we are not interested in penalties; our companies—my own company, and I think all of them in this association—are reputable companies, and are trying to comply with the Act and consequently they offer no objection to reasonable redress in case of violation or infringement.

Section (5):—

That section 18 of the said Act is amended by adding the following subsection:

18 (9). For the purposes of this section “musical work” shall be held to include any words so closely associated therewith as to form part of the same work.

Again, I go back to the words “literary” and “dramatic”. The deleting of these words might have tended to make it impossible for us to record the words of a song. We feel that the words of a song are part of the song and the proposer of this bill has agreed to that. It was not the intention to prevent a talking machine company from recording a song. After all, the words are half of the record in the case of a vocal record, so it makes it clear that the deletion of the words “literary” and “dramatic” does not have the effect of making it impossible for us to record the words of a song. What we have suggested is adhering to the English Act itself, not virtually, but actually adhering to it.

Item D:—

That section 8 of Bill 2 be amended to read:

The said Act is further amended by inserting, immediately after section 18 thereof, the following:—

18 (A). Any person manufacturing any record, roll, film or other contrivance for the acoustic execution or visual representation of a work, or publishing or printing any edition or any copy of a literary, musical or artistic work, shall mark clearly thereon the year of manufacturing or printing the same, or a maple leaf indicating that such work has been made since the enactment of this section. And any such record, roll, film, other contrivance or edition or copy made after the first day of January, 1926, not so marked, or marked with a date which is not that of the actual manufacture or publication, shall be deemed to have been manufactured or published in violation of copyright, so long as copyright in the work continues to subsist.

Now, apparently, the object of what was proposed in Bill 2 was to enable the owner of the copyright to differentiate between contrivances that had been

[Mr. Edgar M. Berliner.]

manufactured prior to the enactment or the coming into force of the copyright law—I am speaking now of the record industry, or in so far as it pertains to records—because any records made prior to the coming into effect of this Act were free of copyright royalty, but the composers and publishers wanted to know which records were made before and which were made after, so they wanted to have the records made after January 1, 1926, designated in some way, so they elected to have us put the date on the label of the record. That would necessitate our reprinting all our labels, making entirely new electros at a great expense, but inasmuch as their request was a reasonable one, we suggested the words “or a maple leaf.” It is possible for us to make a mark then on the record itself, on the matrix, and this will appear on all copies subsequently made, so it practically means the giving to the composer and the author a means of identifying which records were made prior to and which were made subsequent to the passage of the Act. So that we proposed, after January, 1926, that, beginning then, we shall mark our matrices—which are the original plates—and that mark will appear on every record, and then the interested parties will know that these records were made subsequent to the 1st of January, 1926.

Item E:—

That section 13 of Bill 2 be amended by striking out therefrom the last subsection (25-E).

The effect of this portion of Bill 2 was to bring into force in Canada a number of old Imperial Acts. We think this is a step backward, particularly as in England they have revised these acts themselves. Consequently, we have asked for the deletion of this section—section 13—striking out the last subsection.

Item F:—

That section 17 of Bill 2 be amended by adding after the word “claims” in line 13 thereof the words “and no grantee shall maintain any action under this Act unless and until his grant has been registered.”

Now, under the old Act in the case of a prosecution it was necessary for the party claiming to have ownership in a copyright to register not only his own grant but all preceding grants. That is, the grants that are proof of his right and title to that last grant and the proposer of Bill 2 struck that out completely. Now, we have agreed to a change there, simply calling upon the owner of a copyright to register his own grant, and not insisting that he register all the prior grants which led to his own ownership. There is in copyrighting a considerable transference of rights, and there may be two or three or four assignments, and so we merely ask that the final assignment, the assignment upon which the owner is claiming either infringement or other rights, may register his own right, so that we may know what it is all about.

Item G:—

That section 18 of Bill 2 be cancelled.

Now section 18 of Bill 2 had for its purpose the reviving of a lot of copyrights which expired between 1912 and 1924. Really, in that case the reviving of old rights that had already expired was unprecedented and we thought it was rather unfair, and we think we have convinced the proposer that it was unfair. We rather think it is inadvisable to go back and give a man rights, when his rights have already expired.

Item H: “That section 19 of Bill 2 be cancelled” is the same thing; it merely hinges on the other.

[Mr. Edgar M. Berliner.]

By the Chairman:

Q. Does that complete your statement?—A. That completes our proposed amendments to Bill 2, of which I have given copies.

The CHAIRMAN: Does any member of the Committee wish to ask any questions of the witness?

Mr. CHEVRIER: Mr. Chairman, I want to make this clear. The witness has read a memorandum, and has left a copy with you, which is headed "Amendments Proposed to Bill 2 by Representatives of the Record Industry."

I said a moment ago that we are always prepared to meet a fair demand, provided a fair demand from our side was met in the same friendly spirit. We are prepared, after some discussion, to depart from the plenitude of our rights, and to agree, subject to what the Committee may say in the discussion, to agree to Item A, Item B, Item C and Item D. We do not agree with Item E unless we get something equivalent in return. That may seem somewhat Scotch, but Item E of the proposed amendments takes away all of the rights that were granted to the authors under the British statutes, Section 47 of the Act, and with one stroke of the pen removes all of those British Acts, all these rights and recourses; removes from that the authors' protection; it takes all of that protection away. We cannot agree to that. I would probably agree to this; that this Item might be referred to the law clerk, and if the law clerk was satisfied that all the rights granted and conferred on us by these British statutes had found their way into the Canadian statutes, or that such portions of this protection which are not now to be found in the Act should be inserted therein, then we could agree to that. I quite understand that it is not good legislation to introduce into a Canadian statute references to a British statute or any other service, but the Canadian statute should contain all of the rights to disposition which should go with that law.

We agree to Item F. We do not agree with Item G, and as a sequence of our disagreement with Item G, we cannot agree to Item H.

The CHAIRMAN: Are there any further questions, gentlemen?

By Mr. Chevrier:

Q. Just a moment. Mr. Berliner, you are in the record industry?—A. Yes, sir.

Q. How long have you been in that industry?—A. Eighteen years.

Q. How long has radio been in active operation as a means of broadcasting music?—A. Since the latter part of 1921, to my knowledge.

Q. Just a few years. What is the effect of a radio broadcast or of a radio broadcasting on the sale of records?—A. That question is difficult to answer in a few words. I can give you the extent of my knowledge as to its effect, both as far as our own company is concerned, as far as Canada is concerned, also with regard to the United States and over in England, from what I have learned as to the effect of radio on the sale of records. First, speaking broadly and generally, in some cases it helps and in some cases it hurts. I want to say that at the present time we, in Canada, are suffering from a depression in our business. You asked me as to the effect of radio on our business. It is possible that that depression in our business is due to radio entirely, or partly, or not at all. There is a depression, but as you know, a depression exists in practically all industries in Canada at the present time. I have known of cases where the broadcasting of a selection has given rise to a demand for the records of that selection; I know of two particular cases that are outstanding. On the other hand, I know where many more attempts have been made to stimulate the sale of records by broadcasting of this kind that have proved absolutely futile. In the United States record industry which is depressed as well—when I say

[Mr. Edgar M. Berliner.]

record industry I mean record and instrument business, talking machine business—in the United States there is a marked depression which is probably somewhat out of line with the depression in other trades. In England, to my knowledge—we have connections in the old country in the same business—I have been told by these people—although this is hearsay it is hearsay from reliable people, people whom I may say are intimately connected with our own business—there, I have been told, when new stations are opened in a certain field in any particular part of the country, there is immediately a response. That is, the record business drops down, but in the course of a few months it restores itself to normal.

You have asked me a question which, in answering, I must add this. I do not think any man is qualified to answer your question to-day, the reason being that it is of such short duration, and we have had so little experience with the thing, and the evidence as I have given it to you is so conflicting that I do not think any man is in a position to say that it helps or hurts, or to what extent. Let me add this,—I have not said that with the idea of hedging—I am giving my firm conviction. The information I gave you as to Canada is from my own absolute knowledge and experience, the information in regard to the United States comes from people both in the manufacturing industry there and in the retail business; that concerning England comes from manufacturers, and the evidence is conflicting, it is not the same in any of the three countries I have mentioned, so frankly I do not know just where we stand.

By Mr. Rinfret:

Q. Your evidence is more regarding the selling of records. As to the selling of machines, do you not think that the coming of the radio has hurt your sale of talking machines?—A. Now, again, I want to preface what I say by emphasizing the difficulty of answering your question, because of peculiar conditions, and in order that you may understand what I am driving at I will be obliged to explain these peculiar conditions. In the first place, I stated that in the United States, for example, the whole talking machine industry was considerably depressed. In Canada—I do not know about the sales of our competitors' instruments, yet strangely enough, during the past year our sales of instruments are practically the same as for the year before. I made a reference to peculiar conditions, and the peculiar conditions are these, that in our own case—I have told you that our instrument business was not depressed this past year, that it amounted to within a small percentage of the business of the year before, and if there had been a tendency to drop, it would have shown itself this year. The peculiar circumstances which have caused me to make my answer conditional are these, that in the last year and a half we have started to manufacture Victrolas in Canada, which we did not do before. Possibly due to increased efforts which have been made in the promotion of business—

By Mr. McKay:

Q. Any difference in the prices?—A. The price has been reduced in some instances, and undoubtedly will be further reduced shortly, but in starting a new industry like that it is necessary to train in people, and I may say frankly that the cost of the first thousand or two instruments was considerably more than we could buy them for, but as these costs come down in the course of time they will naturally be passed on to the consumer. Some reductions have already been made, and I hope there will be more coming soon, but a year and a half is a short time in which to train an entirely new force of workmen in producing cabinet work of the highest grade in the world.

[Mr. Edgar M. Berliner.]

The CHAIRMAN: Any further questions, gentlemen? Thank you, Mr. Berliner.

The WITNESS: Mr. Chairman and Gentlemen, thank you very much for the opportunity of appearing here.

The witness retired.

The CHAIRMAN: The next witness is Mr. R. H. Combs of Toronto.

ROBERT H. COMBS called and sworn.

The WITNESS: Mr. Chairman and Gentlemen, I am here representing the Canadian Radio Trades Association. Originally we had intended—

Mr. CHEVRIER: Just a moment, please. Mr. Chairman, as the witness has stated that he represents the radio people, it is time now for me to move an amendment to the section we are considering, that is paragraph (q) of subsection (4) of section 2, appearing at the top of page 2. I now move to strike out paragraph (q) from the bill as it now stands, and substitute therefor the following:—

(4). Paragraph (q) of section two of the said Act is repealed and the following is substituted therefor:

(q). "performance" means any acoustic execution of a work or any visual representation of any dramatic action in a work, including such execution or representation made by means of any mechanical instrument and any communication, diffusion, reproduction, execution, representation or radio-broadcasting of any such work by wireless telephony, telegraphy, radio or other kindred process. Provided that any communication, diffusion, reproduction, execution, representation or radio-broadcasting by any such wireless, radio or other kindred process, when made for no gain or interest direct or indirect, shall not constitute a performance under this paragraph.

By introducing this amendment I change nothing of the intention which I had when I introduced paragraph (q) as it now stands in the bill. To my mind it does not change anything at all; it does not change the present state of the law, but as my intention in drafting that section of the bill was to make the law absolutely clear, I am now making it very much clearer, that this is not to affect any communication, etc., by any such wireless, etc., when made for no gain or interest, direct or indirect, it shall not constitute a performance under this paragraph. In this connection may I be allowed to say that this is in absolute conformity, to my mind, with the Criminal Code, section 508A, which has been the law since 1915; that it is in absolute accordance with the spirit and the letter of the law of section 16 of the Copyright Act in force since January, 1924, and that it does not hurt any of the amateurs or legitimate interests who are now preparing to stand by the law. In other words, I am not changing one iota of the present law, but simply making it clearer.

Discussion followed.

The WITNESS: Mr. Chairman and Gentlemen; as I started in to remark—

By Mr. Chevrier:

Q. Mr. Combs, where are you from?—A. Toronto.

Q. Where were you born?—A. I was born in Missouri.

[Mr. R. H. Combs.]

Q. Are you a naturalized Canadian?—A. No, sir.

Q. Who sent you here?—A. The Canadian Radio Trades Association.

Q. Where are they located?—A. The head office is in Toronto.

Q. How long have you been in Toronto?—A. Seven years.

Q. Are you connected with any other industry but that one?—A. I am not connected with that except as a member and as chairman of the committee appointing me to appear before this Committee.

Q. Are you connected with any other industries?—A. I am general manager of the Canadian National Carbon Company and the Presto Light Company.

Q. Do you represent any American concern?—A. None.

Q. You say you do not represent any American interests here?—A. None, whatever.

Q. And you have no instructions to appear on behalf of any of them?—A. No, sir. I may say, in starting, that we intended originally to bring a much larger delegation of our association than we have here. It would have been as easy to bring one hundred, but we did not think it was necessary. The amendment offered by Mr. Chevrier, of course changes a little bit the argument which I had prepared to submit here, so that where the argument may appear to conflict with the original proposal, please disregard it.

By Mr. Chevrier:

Q. I wish you would confine your remarks to the amended motion. You can easily do that?—A. We will, as far as possible.

By Mr. Irvine:

Q. Is this the only section that affects you?—A. No. I wrote this manuscript because I did not want to be considered an extemporaneous speaker, for various reasons.

In common with other industrial interests, we believe that the Canadian Copyright Act, 1921, has been in force too short a time to justify its amendment at this session. As a bill is now before Parliament amending the Act we take it that our view is in the minority. If copyright legislation is now to be amended the radio situation should be taken care of in the manner which present facts seem to warrant.

If at the present time a broadcasting station was prosecuted for putting on the air a copyrighted composition, it might escape the penalties for infringement on the contention that the broadcasting did not constitute a public performance. For instance, if a station say at Calgary, were to put on a grossly immoral show, does the Committee think that a listener-in at Ottawa might properly be sent to jail for attending the Calgary immoral performance? The proposed definition of public performance in Bill No. 2 takes away the one chance which a radio broadcasting station would have of escaping the penalties for an infringement of copyright.

At the present time, it is the custom of broadcasting stations to maintain music libraries in order to be in a position to comply with the many and varied calls which they receive for request numbers. To keep their libraries up to date they purchase the greater portion of music immediately it is published, unless, as not infrequently happens, they are furnished with the music gratis by the publisher. As long as music publishers—and they of course must be regarded as partners with or representatives of the authors and composers—directly encourage broadcasting stations to utilize their compositions on account of the free advertising which they receive thereby, it does seem the height of

unfairness that they should at the same time retain the privilege of prosecuting the said stations if by chance the broadcasting of a particular selection retards rather than assists its sale. This is the position in which we are placed at the moment. The publishers' desire is to run with the hare and hunt with the hounds. They wish to have all the benefits of the stations and at the same time to be in a position to demand recompense if by the use of their compositions, which may have been purchased by the station, that station in any way prejudices the sale of the particular sheet of music concerned.

I would direct the attention of the Committee to the fact that the author as an author has no real control over most musical works, having relinquished that direct control to the publisher who assumes the financial risk of placing the work before the public. The author may have received a direct cash payment for the work or he may have entered into an agreement to receive a certain royalty on the publisher's sales but by whichever method he disposed of the composition the real control has in 99 out of 100 cases passed out of his hands and become vested in the hands of the publisher. The question is therefore not one as between the radio station and the author but is one between the radio station and the publisher. In passing, it may be mentioned that on this continent the publisher is, in practically speaking all cases, a United States house. The business done by the two or three Canadian music publishing houses is so small comparatively that it does not really enter into a consideration of the radio question as a whole. We can run our broadcasting station very nicely without adopting Canadian publishers.

Before the advent of radio, publishing houses were continually on the lookout for methods outside the ordinary channels of publicity, to bring their works to the attention of possible purchasers. The Committee have no doubt often heard the expression "plugger." A plugger as used in the musical trades is a man who for remuneration, and this often runs as high as \$500 a month even in Canada, goes from restaurant to dance hall, and dance hall to theatre, where with or without remuneration at those places he sings the songs which he is employed to popularize; the publisher for the wherewithal to meet the \$500 a month expenditure and profits upon the risk, depends upon the increased sale of the sheet music brought about by such plugging. In addition to being expensive, this method of advertising was accompanied by rather unusual risks inasmuch as by the nature of the employment the employer was unable to follow the plugger in his activities and therefore had to depend to a greater or lesser extent upon the honesty of the party employed that he was really working the hours claimed. Some of the outstanding examples of these pluggers or "buskers" as they were called a few years ago might be cited in the case of Irving Berlin, Charles Balmer who put over Drumbheller's "Two Little Girls in Blue," Will Bellman who made famous Charles K. Harris' "After the Ball." Since the advent of radio this costly and risky method of advertising has been to a considerable extent discontinued or conducted on an entirely different basis. Wendell Hall, acting as his own plugger but utilizing the radio, brought his own composition "It Aint Gonna Rain No Mo'" into immediate prominence greatly to his own financial advantage, and radio has become the means whereby selections are now made known to the public.

While many of the stations, especially the larger, are operated with the object of obtaining a profit or in other words securing advertising advantages in excess of the outlay, it is doubtful if even any of the larger stations have as yet so functioned. In connection with the operation of the greater portion of the larger stations the loss has been quite marked. There are some stations which might possibly be classed as not operating for a profit but even the most of these in the course of their regular activities frequently are linked up with commercial organizations to an extent which might make it difficult for them to prove that they are not subject to the penalty clauses in the Copyright Act.

[Mr. R. H. Combs.]

Even if not subject to the penalty clauses of the Act these purely amateur stations could almost certainly be prevented by injunction from using copy-right selections without permission. The author has the sole right to perform or to authorize someone else to perform his work. Mr. Chevrier has just finished that particular part of it by his amendment.

By Mr. Chevrier:

Q. I did not quite catch that?—A. This had reference to a purely amateur station which could not be prosecuted but which could be stopped by injunction from using certain works. Your change has altered only that part of it.

Mr. CHEVRIER: It has not altered the law; it has just taken the wind out of your sails.

The WITNESS: If CKCO advertises that it intends broadcasting "Follow the Swallow" on Tuesday next and if the copyright owner of that selection asks to-day for an injunction to prevent such broadcasting, the courts would almost certainly grant his request. If this be so, then purely amateur stations, while possibly exempt from the penalty clauses are practically in no better position than commercial stations; for, if their activities can be interfered with by injunction, their existence is too precarious to be of long duration.

The Choral Society of Hull, over CNRO, broadcasted a programme on Wednesday night of numerous copyright selections including the "Marseillaise," a composition on which royalties in other quarters have been claimed by European interests. CNRO being a station operated for profit it may, I think, be assumed that the copyright owner in Canada or his agent could, with the Act in its present shape, secure before the local courts a judgment for reasonable damages, possibly from \$1 to \$3 for the single use, and could, before the courts if Bill No. 2 becomes law, secure judgment for the minimum fine of \$50 as provided for in section 12 of Bill No. 2 or any amount in excess thereof up to \$250 as provided for in the same section, half of which fine would go to the informer who would possibly be the party controlling the composition in Canada. Any interference with rights to sing the "Marseillaise" would certainly be frowned upon by millions of Canadians and there are numerous other selections of possibly lesser merit in connection with which the circumstances are the same.

By the Chairman:

Q. Did I understand you to say that the "Marseillaise" was copyrighted?—A. Yes, sir.

By Mr. Chevrier:

Q. When did Rouget de Lisle die?—A. That I cannot tell you.

Q. Will you deny that he died fifty years ago?—A. No, sir, I do not know.

Q. Do you know that the stipulation of the law is that fifty years after the death of an author or composer, he is no longer protected?—A. I would like to ask the privilege of asking Mr. Robertson to answer that question. I think we looked it up yesterday in your presence.

Q. If Rouget de Lisle died more than fifty years ago, the "Marseillaise" is no longer protected?—A. That would be correct. I am assuming that the information which we looked up yesterday is correct, and that it is yet subject to the copyright act.

Q. What about "Rule Britannia"?—A. I also asked about "God Save the King," but I found that that was free. I will proceed.

Mr. LEWIS: I understand that Mr. Chevrier is doubting the evidence that has been given in regard to the "Marseillaise," and the witness on the stand stated that he would like to ask a certain gentleman a question.

Mr. CHEVRIER: That is his privilege.

Mr. E. BLAKE ROBERTSON: Mr. Combs spoke to me yesterday regarding the radio question in which I take a very active interest. He asked me if there were any outstanding selections on which royalties were being paid or claimed which the public would likely object strenuously to having them removed from the field, and which they might hear without hindrance. I told him of the most outstanding case on which royalties had been claimed and of which I was aware. I said nothing about copyright. I said that royalties had been claimed on the "Marseillaise."

Mr. CHEVRIER: I do not care when Rouget de Lisle died, but nobody could collect any royalties on the "Marseillaise" if Rouget de Lisle has been dead for fifty years. Their claim is only good for fifty years after the death of the author.

The CHAIRMAN: This is a matter that we can take up after the witnesses are through.

Mr. CHEVRIER: Were royalties paid on the "Marseillaise" Mr. Robertson?

Mr. BLAKE ROBERTSON: Not yet, the question was asked in connection with the substantiation of a claim that has not been dealt with yet.

Mr. CHEVRIER: Who is making the claim, if Rouget de Lisle has been dead fifty years?

Mr. BLAKE ROBERTSON: The representative of European interests.

Mr. RINFRET: I do not think it has any great bearing on the bill.

The WITNESS: I was just citing that as an example.

The CHAIRMAN: It was composed about 130 years ago.

Mr. CHEVRIER: There is no copyright on the "Marseillaise".

The WITNESS: Of course, I can only give evidence as far as my knowledge goes, and I did what I could to secure the best knowledge possible on this.

The CHAIRMAN: 1793, I think, was the date of the composition.

The WITNESS: If it was some very popular air it could be proceeded with under section 12 of Bill 2. It was provided for in the same section. Half of such fine would go to the informer, who would possibly be the party controlling the composition in Canada. Any interference with rights to sing the "Marseillaise" would certainly be frowned upon by millions of Canadians and there are numerous other selections of possibly lesser merit in connection with which the circumstances are the same.

From numerous quarters, we have heard the expression of opinion on the part of the sponsors or advocates of this legislation, that it is not the intention that penalties or royalties should be imposed as provided for. If it is not the intention, why the legislation? If it is the intention of those controlling music that its use for broadcasting will continue to be allowed free as in the past, why oppose such permission being incorporated in the statutes? Does the contention that it is the intention of controllers of music to allow music free for broadcasting hold much weight, in face of prosecutions already instituted by Remick and Company, and other large United States publishers? Is it not the more reasonable assumption that if they can get the law framed here so that conviction is certain, they will carry on in Canada the prosecutions they have already commenced in their own country?

Broadcasting stations cannot be operated without music. The contention that there is sufficient now in the public domain to permit of operation is no answer. While much is in the public domain, especially much of the best, the public demand must be served and public taste met, and the public demand, to only a limited extent, is for the selections in which copyright has expired. If music can be secured in Canada only upon the payment of royalties and if the broadcasters secure the legislation for which they are trying in Washington this year, Canadian stations will be placed at a disadvantage and Canada's requirements will be supplied from the South. With the huge influx of American magazines there is now a sufficient tendency towards Americanizing Canada without this additional means being provided. The closing of Canadian stations

[Mr. R. H. Combs.]

would entail great hardship on those with crystal sets and sets of short range as they would lose the amusement and musical educational facilities to which they have become accustomed.

While it might possibly be a slight exaggeration to describe broadcasting stations as public utilities, the fact remains that they have no direct return for their expenditure and the fact likewise remains that the hundreds of thousands of people throughout Canada, some with fairly expensive sets but the great majority with cheap sets, costing in the case of crystal sets as low as one or two dollars, have at their disposal the best music which the stations can select and which their artists can render for the edification of the people. Is there any marked difference between the operation of a radio station which gives the "brain child" of the composer to the public and the operation by the city of Ottawa and practically every other city throughout Canada of free libraries where the brain child of the author goes out to the reading public without the return in royalties to such author which would take place if free libraries were banned. It is but a step from banning of music over the radio in order that the composer may receive the largest possible returns, to its logical corollary, the banning of libraries in order that to the greatest possible extent, the author may receive royalties from each reader. It is not felt advisable to take up further time of the Committee in presenting a case which will appeal to the good judgment of the hundreds of thousands, yes to the millions, throughout Canada and which we feel sure will appeal to the good judgment of this Committee, and in later proceedings to the good judgment of the House of Commons and the Senate. We therefore rest our case with the request that a clause be inserted in the Copyright Act providing that:

"Copyright control shall not extend to public performances of compositions where such performance is by use of the radio."

By Mr. Chevrier:

Q. Are you the Mr. P. H. Combs representing radio and broadcasting interests referred to by a local man, Mr. MacDonald, as the one who was to come here and give evidence?—A. R. H. Combs, not P. H.

Q. And Mr. MacDonald writes me and says you represent the radio and broadcasting interests to the value of over 22 million dollars in plant and equipment. Are you that gentleman?—A. Yes.

Q. Interests of 22 millions in plant and equipment?—A. That was grossly underestimated, however; it is over 50 million, but perhaps Mr. MacDonald has given you an idea that was all in radio; that is the electrical manufacturers who are the people behind radio.

Q. How much monetary vested interest do you represent in radio?—A. My own company?

Q. All of those for whom you are speaking now?—A. Do you mean the amount actually invested in radio or the total activities?

Q. In radio?—A. I cannot give you the exact figures.

Q. But you are connected with concerns who represent at the very least 22 million dollars, grossly underestimated?—A. They are all in the Radio Association.

Q. \$22,000,000 is grossly underestimated?—A. Yes, sir. That is the total investment of those companies who are members of our association, all of which is not intended, however, to imply that all of it is invested in radio.

Q. Now, you want to play a song or sing a song over your radio. Do you object to meeting the author and bargaining with him for the royalty from that song?—D. Do I object to meeting him and bargaining with him for the royalty?

Q. Yes. Supposing Mr. Ladner had written a song and you wanted to sing that song. Why should you want to sing that song rather than Mr. Hoey's song?—A. Personally I don't want to sing a song. We have no control over

[Mr. R. H. Combs.]

what the broadcasting station or the orchestra or the artists do who appear voluntarily; in many cases without any remuneration whatever. In many cases we do not know what they are going to sing. Our contention—

Q. Wait a minute. Don't argue with me. I am not arguing with you. But you, or the one who prepares your programme, or your manager or anybody else—do you think it is unreasonable for that person who wants to sing a song to make a bargain with the author as to the amount of the royalty which he should pay?—A. If there is no discrimination between the broadcasting stations in Canada and the United States and we were to meet on an equal footing, I would say that the situation would be altered, but unfortunately our biggest objection is to the creation of conditions in Canada which our competitors do not have in the United States.

Q. So that on that score you do not care a continental whether the author starves, provided that you thrive?—A. We do. I believe in our statement of the case there we indicated our knowledge of the fact that the author does not suffer; that he benefits—

Q. Wait a minute. Do you mean to say that the author is non compos mentis, or an infant, and does not know whether he is suffering or not, and you are his guardian angel?—A. I mean to say that the author, as a general rule, 99 times out of a hundred, has nothing to do with it; it is his publisher.

Q. Supposing it is his publisher, do you object to making a bargain with the publisher in regard to the payment of royalties?—A. When we have to do what other people do not have to do, we certainly object.

Q. Who does not, by the way?—A. Our competitors.

Q. Who are they?—A. The American broadcasters.

Q. And if the American broadcasters will starve the American authors, you will do the same for the Canadian authors?—A. Not necessarily. It is not proven they are going to starve.

Q. Let us make this difference, or see if there is any difference. Mr. Irvine writes a book, or he writes a drama. He gets a royalty every time that drama is played on the British stage, the Canadian stage, or any other stage. He gets his royalties. Is that right?—A. Yes, we hope so.

Q. And why do you object to paying royalties to an author whose songs you sing over the radio, or cause to be sung over the radio? What is the difference?—A. The same difference which an author would experience in placing his book in the public libraries for thousands of people to read free. He gets his royalty on the one copy; we have to have one copy in order to broadcast.

Q. You seem to be imbued by the superhuman idea of protecting the author against himself?—A. Not at all. We are not protecting him against himself. We are giving a service to the public and doing a service for the publisher.

Q. To the detriment of the author?—A. The author is not interested.

Q. Or the publisher, representing the author?—A. Let us talk about the man who is really interested—the publisher?

Mr. IRVINE: I would like to protest against this, Mr. Chairman. I do not think the witness is insisting any more on his rights than Mr. Chevrier, for the authors, is insisting on the rights of the authors. The witness has the right to stand up for his own rights.

Mr. CHEVRIER: Quite right, provided he pays for the number he uses.

By Mr. Chevrier:

Q. Now, you say that you cannot use the radio without music?—A. We cannot.

Q. And that, therefore, music is a necessary incident to radio performance? You cannot build a radio station unless you get free music? Is that right?—A. I would not say that.

Q. That is what you said?—A. We have radio stations already built, and I expect if they had to pay for their music there would be somebody building radio stations.

Q. You say music is a necessary incident to radio?—A. Yes, absolutely.

Q. So, if you insist upon the privilege of connecting music with the radio—that is, that one cannot go without the other—that is right?—A. Yes.

Q. Now let the trombone manufacturers stop manufacturing trombones because trombones must go with music? You cannot have trombones on the market unless you are going to use trombones?

Mr. IRVINE: Is this an argument on metaphysics, or what is it?

Mr. CHEVRIER: Never mind, Mr. Irvine. When you want to ask your questions, no matter how stinging they are or how smarting, I will let you do it.

Mr. IRVINE: All right; don't forget that.

By Mr. Chevrier:

Q. If the radio necessitates music, then the next thing will be the trombones, which go with music.

By Mr. Irvine:

Q. Of course, you believe in Free Trade; say "Yes"?—A. Certainly. We are down here trying to point out to you gentlemen what this baby industry of radio is. It perhaps means more than any other device that man has ever invented in the development of the country at large, bringing happiness and joy to the sick, the bedfast, the people in the hospitals, and the blind—

Q. Does not a trombone or a flute bring about this same situation?—A. No. Just to get rid of that trombone question, I will say that we cannot use trombones on the radio. They do not transmit well. The objection which we have long had is to the Yankees—

Q. Leave out the Yankees. Don't make me sick with the Yankees.—A. We have to recognize the Yankees—

Q. To the detriment of those who make their living by producing the songs?—A. No, not at all. We have stressed the point to you gentlemen that the publisher sends us free music to broadcast; they ask us to broadcast; they want the broadcasting; they want the advertising. We are saving them money.

Q. If a publisher sends you in music free, that is a bargain between you and the publisher. Of course, then you may sing it over the radio and broadcast it as much as you like; but if he says: "Mr. Combs, this is my sheet of music; I am not giving it to you. pay me 10 cents for this song and then you may sing it," that is different. But if he sends you the music free you may, of course, sing it. Let me understand this then, in the final analysis you refuse to pay the paltry royalty on songs?

By Mr. Ladner:

Q. What does it amount to? We are not arguing with you, but how much does it amount to in dollars and cents?

Mr. CHEVRIER: Since 1915—since the law has been that way—not one cent of royalties has been collected.

Mr. LADNER: But if a man claimed it, how much could he collect?

Mr. CHEVRIER: He could make a bargain. He might say: "You are going to sing a song—

Mr. LADNER: But, how much could he collect?

Mr. CHEVRIER: There is nothing stated; it is a bargain.

Mr. LADNER: But if you did not agree on an amount?

Mr. CHEVRIER: If you came into my store and wanted a pound of tea and I asked you \$1.50 per pound—

Mr. LADNER: But if no money is mentioned in the radio business—

[Mr. R. H. Combs.]

By Mr. Ladner:

Q. Do you operate the radio for profit?—A. There are some stations which operate for advertising purposes.

Q. How many important radio stations are there in Canada?—A. Nine.

Q. How many are operated for profit?—A. All but two of them operate for the advertising which they get. There are two stations in Canada which really are operated by societies, which are not broadcasting for advertising or publicity purposes.

Q. How do the radios make their money?—A. They do not make any money except from the advertising they are getting out of it. They have to imagine how much they are getting; they have to charge their operating expenses up to good-will and publicity; they write it off as an expense to advertising.

By Mr. Irvine:

Q. They make their profit on the selling of instruments?—A. On whatever cost it may be. I believe the Canadian National Railways charge it to the operating account, in endeavouring to secure passengers for their trains by advertising their radio facilities.

By Mr. Chevrier:

Q. Is there not an interest there for the Canadian National to broadcast these things, and does it get a direct gain by broadcasting?

Mr. LADNER: It seems they do not gain as much as the author.

Mr. IRVINE: If it pays the C.N.R. to advertise in that way, does it not seem possible if I should write a song—and I intend to some day—that it will pay me to broadcast it?

The WITNESS: If the song is worth a cent you are wise to put it on the air, but if it is no good, I would not advise you to do it.

By Mr. Rinfret:

Q. Who will decide that?

Mr. IRVINE: I want to decide that, because Mr. Chevrier has referred to my writing a book. I have written several books, and there is one book I would like to have read over the air, and if you will arrange that, I will waive any rights to royalties.

Mr. CHEVRIER: You are making a bargain there. If you think your book is not worth putting on the market, by shoving it into people's ears through the radio, you are making a bargain. If I think my song is worth being shoved into somebody's ears over the radio—

Mr. IRVINE: The people may not think it is any good and they can shut the radio off.

Mr. CHEVRIER: But it is a bargain. However, let me go on with the witness for a few more moments.

By Mr. Chevrier:

Q. You want now the free use of music over the radio?—A. We think we are entitled to that.

Q. Now, why do you not ask for the free broadcasting of dramatic plays over the radio?—A. For the reason that you can operate a broadcasting station without a play; you can get good music over to the public, give a real entertainment, do a good public service without using plays.

Q. Do you know that CKCK—I think it is—at La Presse in Montreal is now actually broadcasting plays over the radio?—A. No.

Q. Well, it is a fact.—A. I know WGY at Schenectady is doing it.

Q. Is that not the entering wedge? You want free music to-day; to-morrow you will want free dramas; and pretty soon you will want free everything?

[Mr. R. H. Combs.]

—A. Mr. Chevrier, is there any difference between your sitting there and saying what we want to-morrow, and your sitting there to-morrow and, perhaps, saying that we should close our public libraries?

Q. No, I am more charitable than you are. There was a judge in the United States—A. There were only three cases of which I know in the United States, one of them was decided by Judge Lynch. This was considered more or less of a friendly suit. It was brought against Bamberger & Company, in Newark.

Q. Are you responsible in any way for sending out these circulars to the members of Parliament?—A. I do not know what you are referring to. I have sent no circulars to any members of Parliament.

Q. Do you concur in those statements?—A. I don't know; I have not read them; at least, I do not remember if I have read them.

Q. Are you aware that there are two other judgments rendered in the United States forbidding free broadcasting?—A. I was going to tell you about these three cases when you interrupted me.

Q. There is one judgment now under appeal that allowed the free use, by saying that the word "performance"—A. That is the case of the Crossley Manufacturing Company.

Q. There are two other judgments the other way? Is that right?—A. There were two judgments; the first judgment was the one by Judge Lynch in which he decided that broadcasting did constitute a performance, but he entered no order, awarded no damages, nor did he issue any restraining order, but left the case to be appealed, but no appeal was taken. That was the case of Bamberger—

By Mr. Irvine:

Q. What happened in that case?—A. In that particular case, which we claim was a friendly suit, the judge left the case for appeal, although he found that it did constitute a violation. He left it open for appeal because he thought it ought to go to the Court of Appeals, as it was getting to be a big question—

By the Chairman:

Q. He did not send it on for appeal without rendering judgment himself?—A. He gave judgment that it did constitute an infringement, but he issued no order. He left it for appeal, but it was not appealed.

By Mr. Irvine:

Q. There were two other cases?

Mr. CHEVRIER: Let us finish with this one.

By Mr. Chevrier:

Q. This judgment was delivered previous to August 11th, 1923, is not that right?—A. I don't remember the date.

Q. Well, I know it was, because here is a copy of it.—A. You must have a copy of it there.

Q. Do you find any quarrel with the judge when he says that the copyright owners and the music publishers themselves are perhaps the best judges of the methods of popularizing a musical selection? Do you find any quarrel with that? Do you find any quarrel with this: "The method, we think, is the privilege of the owner"? Do you find any quarrel with this: "The plaintiff should not complain of the broadcasting of its song because of the great advertising service thereby accorded the copyrighted number"? Do you find any quarrel with those things?—A. I am not quarrelling with any of those things.

Q. Do you find them unreasonable?—A. I leave that to Judge Lynch. He tried the case.

Q. Do you find these things unjustified?—A. I would not like to express an opinion one way or the other; I am not a member of the Bar.

[Mr. R. H. Combs.]

Mr. LADNER: May I suggest, in order to expedite the evidence which is pertinent to these sections, that decisions in the United States, such as this one, really could not influence the witness a great deal. He is an individual who is expressing his opinion from a local viewpoint. It is not a matter of public concern here, and I think there is a real question which we have to consider in regard to the reason the radio people ask this concession, is because the United States broadcasting stations have that advantage. I think that is a pertinent point which requires consideration on our part, so far as the radio people are concerned.

Mr. CHEVRIER: This gentleman takes such a great interest in the author. The judge asked this question: "Is the defendant, the CNRO, an eleemosynary institution that they must take care of the authors?" Has it reached a point where you have to take care of the authors because they cannot take care of themselves?

The WITNESS: We are not an eleemosynary institution.

By Mr. Chevrier:

Q. Then why do you try to be so charitable?—A. Because we are charitable. We are doing a public service without any pay or recompense from it.

Q. Are you aware of any other judgment from the United States?—A. I am aware of two others.

Q. One is the Remick case?—A. Yes.

Q. Do you find any quarrel with this: "A performance is one and the same whether the listener be at the elbow of the leader of the orchestra playing the selection, or at a distance of a thousand miles"? Is that unreasonable?—

A. I will not give an opinion on that. I do not wish to give an opinion that conflicts with a United States judge.

Q. Come now, you are not so anxious for and so susceptible to American appreciation that you cannot give me that answer. What is it?—A. I cited a case in my brief—

Q. Is there any difference?—A. Would you want to send a man to jail in Toronto for listening to an immoral performance—

Q. You could in all decency answer that question. Is there any difference? Yes or no?—A. I would not like to answer that question, because I have not had time to consider it, nor am I in a state of mind to properly consider it.

The CHAIRMAN: I don't think you can fairly compel the witness to answer "yes" or "no" to that question.

Mr. CHEVRIER: Is he not intelligent enough to answer it "yes" or "no"? If he is not intelligent enough to answer that question, I submit his evidence should be entirely disregarded.

The CHAIRMAN: My view is that it is a question which involves so much that it would be very difficult for any man to give a plain answer "yes" or "no".

Mr. CHEVRIER: Let me repeat the question, and if you give that decision over again I will be satisfied. My question was "A performance is one and the same whether the listener is at the elbow of the leader of the orchestra playing the selection or at a distance of one thousand miles. What is the difference?" If that question is so complicated that a man with the intelligence of this witness cannot answer it, all right.

The CHAIRMAN: In one case, where a man is at the elbow of the orchestra leader, anybody who is within a certain radius can hear it; on the other hand, a man has to be the possessor of certain apparatus to hear it, and to be the possessor of that alone. I should find it very difficult to answer "yes" or "no" to that question.

Mr. CHEVRIER: I have just one other question.

By Mr. Chevrier:

Q. Are you aware that the government exacts a fee from all the listeners-in?—A. Yes, sir.

Q. What is done with that money?—A. There is not enough done with it.

Q. What would you suggest should be done with it?—A. I would suggest that the fee be raised to get more revenue out of it, or that an appropriation be made by the House to give the department a sufficient amount of money to properly control the operation of the radios in Canada, so radio may progress along ordinary lines.

By Mr. Rinfret:

Q. What constitutes a broadcasting station?—A. A broadcasting station may be constituted in many different ways. It depends on the kind of station to which you refer.

Q. I will make my question more plain. To have a broadcasting station you must have the room where it is situated?—A. Yes.

Q. Are you paying rent on that room?—A. I am not a broadcaster in that sense of it; I am a member of an amateur society who do broadcasting. I am representing the manufacturers, jobbers and dealers in radio apparatus.

Q. Are you aware that rent is paid for the room where the broadcasting station is located?—A. I do not know that; I do not know whether they pay rent for it or not.

Mr. RINFRET: I think we have in this answer, Mr. Chairman, clear evidence that the witness is not willing to answer our questions.

Mr. CHEVRIER: I think so.

Mr. LADNER: Well, I do not.

The WITNESS: I will answer any question that you will put in such language that I can answer it.

Mr. LADNER: I think, with all due deference to Mr. Chevrier and Mr. Rinfret, that our questions sometimes get a little too personal and argumentative, directed to the fact that the witness has got to give some answer that will conform favourably to the opinions of the gentlemen asking them. In connection with this evidence we want the opinions of the witnesses, without driving them or coercing them in anything; simple questions, and simple answers, in a nice pleasant way, will give us the information that we want.

Mr. RINFRET: But when I ask if the rent is paid for the room where the station is located—that does not seem to be a very difficult question.

Mr. LADNER: I agree with the witness, and unless he is in a position to know personally, his evidence is only hearsay, and he should not be asked to give it.

The WITNESS: That is my understanding; I have said before I am not a broadcaster.

By Mr. Rinfret:

Q. Are you aware that a certain expenditure is incurred to establish a broadcasting station?—A. Most certainly, sir; it costs a lot of money to operate a broadcasting station.

Q. It may be rent or it may be salaries to the operators?—A. Yes, sir.

Q. Or it may be paying for the matter or work or whatever material is used for building the apparatus itself? Do the broadcasters object to paying all that expenditure?—A. Do they object to what?

Q. Paying rent for the room, or paying for the instruments and everything they use to broadcast?—A. I do not believe anybody who is broadcasting would broadcast if they did not want to buy the apparatus and make the necessary installations and go to the expense of building it; there is no question about it.

[Mr. R. H. Combs.]

Q. Are you aware that in certain cases they pay the singers?—A. Yes, they do. Many of the stations pay their artists.

Q. So is the situation this—and I want to be fair and I think I am, notwithstanding remarks to the contrary—that it is a fact that the broadcasters pay for their rent; they pay for their machines; they pay for the singers; they pay for the operators; in fact they pay for everything except the music they use. Is that the fact?—A. Commercial broadcasters, of course, will have to.

Q. And when you say you are performing a public service that will not be an argument to give the landlord for not paying the rent; it will not be an argument to give for not paying for the machine; and they could not use that as an argument to drag in a singer and force him to sing, so do you think it is a good argument to use music without paying for it?—A. I would like to illustrate our attitude on that point. In the first place, Parliament is composed of representatives of the public and the public interest and the public service should be paramount in the mind of Parliament. We are rendering a public service by giving the public entertainment, by giving education, by giving music. We do not contend in this case, nor have we entered any complaint against any of these things except discrimination against the Canadian broadcaster, which is being brought up through the difference of conditions between our competitors in the United States and Canadian broadcasters.

Q. You are not denying the right of Canadian composers except in the way—A. We are not denying any property rights which are bestowed by law on anybody. We are trying to show to you gentlemen here that our use of music is not a damage to the publisher or the owner in any way, shape or form, that it is really helping him and we do say that we are doing a public service in putting all these fine books into the public libraries for everybody to read.

Q. Let us see your exact stand in the matter. You acknowledge the right of the composer to his music?—A. We have never denied property rights.

Q. Will you also agree to this, that if the United States would recognize the right of the copyright to be paid by the radio people, you would at once agree to pay it in Canada?—A. We have indicated in a letter which was sent to the members of this Committee by the association; we have particularly stressed that very point.

Q. You agree to those two things?—A. We have contended that the present Act as it stands to-day—if a judgment is rendered in the United States by the Court of Appeal in the present case, the Crosley case, that broadcasting constitutes a public performance under the Copyright Act, that the present Act will give the Canadian author, composer, or owner the same right that they have in the United States, and all they will have to do is take a court action. Under the present Act as it exists, we have contended that if in the United States where this thing has been tried out, and which really predominates the radio situation in North America, if the Court of Appeal decides that radio broadcasting constitutes a public performance, the Canadian composer can bring an action in the courts and get the same result as he could get under this Act. Of course you cannot tell what the result is going to be over there.

By Mr. Ladner:

Q. Supposing the United States did not have to pay royalties and they did have to do it in Canada, what effect would that have upon the radio broadcasting stations here?—A. It would mean that you would get your music from the American broadcasting stations, because we cannot pay what we have to pay now. That is, outside of one or two things.

Q. Have you gone into the question of being able to estimate how seriously that difference will affect the broadcasting stations here?—A. Of course, we have always considered that when we get under the operation of a law of this kind, we are going to be pestered to death and preyed on all the time, because

[Mr. R. H. Combs.]

unwittingly we will offend against this section or that, and the next morning we will have a man come around and tell us what the law is.

By Mr. Chevrier:

Q. You have not been interfered with?—A. Not at all yet, but that is under the law as it is to-day. What it may be under this new law—

Q. Does that change the law?—A. It defines it.

Q. So much the better; it is clear, and you cannot touch it.

By Mr. Ladner:

Q. Take a popular song; "It Ain't Gonna Rain No Mo'", you referred to that. Supposing you had to pay a royalty for the use of that song. Normally, what would that royalty amount to?—A. According to Mr. Chevrier a while ago, it would be ten cents, but we are afraid that would not be a fact.

By Mr. Chevrier:

Q. Would you dispute it?—A. No.

By Mr. Lewis:

Q. Would that be for the whole year?

MR. CHEVRIER: Every time the song is sung you would be entitled to your copyright.

By Mr. Ladner:

Q. Have you any idea as to the amount of that royalty?—A. We do not know.

Q. Being in the business, can you approximate it?—A. For instance, the ordinary programme put on at a broadcasting station may amount to 15 or 16 numbers in a performance. Some of the stations run two or three performances a day, some one a day, and some only once or twice a week. It might run up to 500 or 600 numbers on the air in a week, or perhaps 300 or 400.

Q. What would an average proper royalty be, based upon the royalties charged in other ways?—A. I have never seen any suggestion of what a proper royalty would be; I have not any idea.

MR. CHEVRIER: The royalties are two cents on records.

MR. LADNER: Two cents on each record?

MR. CHEVRIER: Yes.

MR. LADNER: And that can be played 500 times.

MR. CHEVRIER: Yes, but if Caruso sold his rights for \$5,000, and so much on every record——.

MR. LADNER: How much is on the record of "It Aint' Gonna Rain No Mo'", two cents?

MR. CHEVRIER: Something like that.

MR. LADNER: Is it your idea that every time these radio stations sang that, they would be charged two cents?

MR. CHEVRIER: That is the law now; I could exact that, but I never have.

MR. LADNER: This seems to be a nettle without any needles.

MR. CHEVRIER: The idea is that if I had a song and somebody wanted to sing it over the radio, they would know where to get me and they would come to me and say, "You have a repertoire of fifty songs. I want to be entitled to play those for the whole year, what bargain can I make?" I will say, "I will let you have my whole repertoire for \$100, and you can have it for the whole year." For instance, we have novels that are protected. A newspaper comes to us and says, "We want the privilege of reproducing your novels in our paper." We say, "Very well", and we make a bargain. We have bargains with newspapers, with large circulations, where we charge them \$52 a year and

they can take any novel out of this collection and print it in their paper, provided they include the name of the author and the name of the book; they can print all during the year as many novels as are included in the collection.

By Mr. Ladner:

Q. What proportion of the songs and the rest of your repertoire on a radio would be by Canadian authors, as compared with American authors?—A. I would not like to quote a figure as the exact percentage; it would be a small percentage.

Q. Roughly?—A. Not over five per cent or six per cent.

Q. So in making a law protecting authors in Canada, we protect 95 per cent of the other side and five per cent of this side?

Mr. CHEVRIER: We protect 95 per cent on what side?

Mr. LADNER: On the American side. 95 per cent of American publications are used in radio broadcasting in Canada in comparison with five per cent of ours.

By Mr. Ladner:

Q. Do you think that when our friends to the South protect themselves to the extent of 100 per cent we should add a protection of 95 per cent?—A. I think you refer also to the European authors, Mr. Chevrier. Mr. Ladner is asking about the Canadian and American authors.

Mr. CHEVRIER: There is under the copyright law a system called the Public Domain. Fifty years after the death of the author his play or book falls into the public domain; his copyright ceases then. There are now in that reservoir, in that public domain, millions of the classical songs, plays, and dramas of the past upon which the broadcasters cannot be charged one cent. If they do not want to pay for the new things, why do they not use those in the public domain?

The WITNESS: But the public is bossing this game a little bit

The CHAIRMAN: Gentlemen, there is another witness to be heard, and I would suggest that matters of discussion between members of the Committee might very well be left until afterwards.

By Mr. Irvine:

Q. I would like to ask the witness this: supposing this amendment which has just been introduced by Mr. Chevrier was to become law, and suppose that Mr. Chevrier was to write a song called, "I Ain't Gonna Ask No More Questions" or "I Ain't Gonna Ask Questions No More"—

Mr. CHEVRIER: That is not possible.

By Mr. Irvine:

Q. "—and supposing that this was sung in the United States, and you would not sing it here because you had to pay ten cents for it and did not think it was worth it, but somebody in the United States sang it for ten cents—what would be the position? Where would Mr. Chevrier get his ten cents?—A. He could not get it.

Q. Consequently his song, if it were worth anything, could be sung all over the North American Continent?—A. You would hear it all over Canada just the same.

The CHAIRMAN: Are there any further questions to be asked this witness? Thank you, sir.

The witness retired.

NORMAN GUTHRIE called and sworn.

The WITNESS: Mr. Chairman and gentlemen, I am appearing here as counsel for the Canadian National Railways in this matter, the reason being that

the attempt to limit or restrict, or prevent our broadcasting from our various stations is a matter of such public interest that the railway officials thought we should appear and express our views.

By Mr. Lewis:

Q. Under the old existing laws, you do not interpret it the same way as our friend Mr. Chevrier?—A. I am afraid I could not for a moment admit the interpretation made by Mr. Combs and Mr. Chevrier on that. That is, that our broadcasting stations are operated for profit.

By Mr. Chevrier:

Q. Does the C.N.R. work at any time for profit?—A. That is a question that perhaps concerns more the management of the railway than my views.

By Mr. Lewis:

Q. I do not think you understood my question. Mr. Chevrier makes the statement that the law as it exists at the present time brings you under that penalty, that this amendment only defines the law. Do you agree with that interpretation?—A. I was going to say that gives me a very good opening for what I have to say. I do not agree with that interpretation. Before I make any observations on that point, I would like to point out just exactly what we do in the way of operation. Take a typical programme, that of Wednesday, March 11, 1925. The first item is "Dominion Department of Agriculture—Market Reports;" second, "Mr. Lawrence Burpee, President of the Authors' Association—a book talk on some recent fiction." Then follows a very fine programme of music. In connection with that, I have to say that our stations are always open for any good public purposes such as advertising Canadian fiction or agricultural reports, or anything of that sort. Every day we have brought to our attention by letters like this (indicating) which I could read if necessary, from music publishers making urgent requests to broadcast their productions. I think I am correct in saying that not a day passes without letters being received, with complete scores, asking us to broadcast productions for the purposes of advertising, I suppose, the musical compositions concerned. We are not very much concerned whether we use copyright music; but what we are concerned in is carrying on a station which will give a certain amount of instruction, or a certain amount of suffering, and something perhaps, to the public in the way of lighter entertainment. If these new conditions are to be imposed upon us, then we would have to give up using Canadian copyright music. I may say that I have not yet been able to ascertain who can possibly be asking for an amendment limiting broadcasting by the Canadian National stations. The evidence of public opinion and the evidence of the music publishers which has come to my hand is all together in the other direction. The Act of 1921, you will notice, sets forth that

"Performance" means any acoustic representations of a work and any visual representation of any dramatic action in the work.

and so forth. Then you come to section 25, which is the penalty clause. Section 25 is the penalty clause:—

Any person who, without the written consent of the owner of the copyright or of his legal representative, knowingly performs or causes to be performed in public and for private profit—

I would like you to note very carefully the expression "for private profit." That contemplates publishing or performing a musical work for private profit, that is, direct private profit of the individual who is publishing or performing it. The section of the Criminal Code, referred to by Mr. Chevrier, is, I am informed by Mr. O'Halloran, in the same terms as section 25. That is the state of the law to-day, and I have no objection to that state of the law. If it

[Mr. Norman Guthrie.]

is continued in that way, it is impossible to prosecute us or to interfere with the broadcasting of the Canadian National stations, because they certainly do not come within the meaning of the Act.

There are several other technical objections which would come up if the matter came before the courts like the definition of the word "perform," and so forth, which I need not go into; I am quite satisfied with the law as it is. The difficulty is that some agency seems to be attempting to alter the law. On page 9 you will find that the amendment strikes out the words "and for his private profit," and sets forth that any person who "knowingly causes any such work to be performed" shall be guilty of an offence under this Act and be liable to a penalty. Thus you have a new subsection of section 25 introduced which takes out the words "for private profit," and makes an attempt to make this applicable to any person who broadcasts. You have the enlargement also of the definition of the word "performs" to include "broadcasting of such work by wireless telephony, telegraphy, radio," and so forth. This bill is one to which, of course, I must take strenuous objection.

By Mr. Chevrier:

Q. To the whole Bill?—A. No, I am only speaking of the broadcasting clauses and only as it concerns the operation of the Canadian National Railway's broadcasting stations, nine in number. I am not concerned nor am I interested in any other stations. I may suggest to the Committee that my original instructions were to ask that the present Act be left as it is or that these provisions be stricken out. At the same time, we are willing to agree to any amendment which will cover the ground. The amendment proposed by Mr. Combs will meet the case, so far as we are concerned, so long as it is made clear that the Act is not intended to interfere with our broadcasting. I will even go so far as to say that if the Committee, possibly as a matter of policy, should declare that broadcasting be limited where there is some evidence of indirect private profit in the way of the sale of machines or something of that sort, I would suggest that if the Committee adopted a limiting clause for those cases it should expressly exclude the stations of the Canadian National Railways from its operation.

I am now going to say a few words about the proposed amendment of my friend Mr. Chevrier, I would like to say that in my judgment the amendment proposed—

Q. Which one?—A. The one you proposed this morning with the proviso; the amendment to section 2 of the Act, I think,—

Provided that any communication, diffusion, reproduction, execution, representation or radio-broadcasting by any such wireless, radio or other kindred process, when made for no gain or interest, direct or indirect, shall not constitute a performance under this paragraph.

Now, if it is the intention of that amendment to reach cases like ourselves, I would have to very strenuously object to it. If this proviso is designed to protect amateur broadcasters, its production is entirely illusory. The person prosecuted, in order to escape would have to prove a negative. The old section of the Act of 1921 was positive. The onus was on the prosecutor to show that the accused operated for private profit. The proviso would shift the onus to the accused and compel that unfortunate person to prove a negative which is impossible. The original section 2, subclause 4 of Bill No. 2 was bad enough, but the amendment proposed to be substituted this morning is impossible to accept. Mr. Chevrier mentioned the Canadian National Railways particularly in his remarks on the subject. In my humble judgment that proviso will not attain his object in our case. The wording is, "when made for no gain or interest direct or indirect." There has been a general assumption

[Mr. Norman Guthrie.]

in this Committee, which I think is entirely incorrect, that because the Canadian National Railways operate a broadcasting station for the purposes of publicity and advertising the railway, therefore they are operating for a gain or profit. But when you come to enforce a penalty clause, as Mr. Chevrier being an excellent lawyer, knows, you are tied down to concrete cases. You prosecute, say, for broadcasting a song or the performance by an orchestra, and under the proviso suggest the difficulty would be to prove that we did not broadcast it "for gain or interest direct or indirect."

Mr. CHEVRIER: That is all right.

WITNESS: We could not establish perhaps whether we made any gain or whether there was any interest, direct or indirect. Reference might be made to our passenger receipts or to some other receipts to show that there was a direct loss, so far as I know.

Mr. LEWIS: We asked a question in the House the other day, in regard to the Canadian National radio stations, and Mr. Graham stated that one of the stations cost, I think, \$18,000, and he went on to say that in his opinion that as the result of this experience the earnings would be increased.

WITNESS: I admit that. I am very glad that you raised that point, because it gives me an opportunity of developing the idea I had in my mind, which is this: Take away the broadcasting of copyright stuff altogether and the gain which accrues to the National Railways would be the same. The advertising would be the same, but what I am trying to point out to my friend Mr. Chevrier is that you must take some other means to establish the necessary connection between the broadcasting of the copyrighted composition, and the gain or profit of the railway. Have I made myself clear?

By Mr. Chevrier:

Q. You said that you could use it copyrighted or uncopyrighted. Is it not a fact that all of these jazz bands and these fox trots and a large number of these things you play through CNRO are American, and that they are not copyrighted here, and that you get the free use of them?—A. That is quite true.

Q. How little of the Canadian copyrighted stuff do you use? Very little. I would make a bargain with you for \$50 a year and make money on it, because it is the principle of the law.—A. That is exactly my objection; it is to the principle, it is not a question of quantity. If we are forced to do so, we can use American copyrighted stuff and cut out the splendid advertising we now give to Canadian compositions.

Q. The next night CNRO uses one of these American jazz band things that is not copyrighted here, just look out. What is your objection to paying us the few paltry sums the law requires?—A. We are not compelled to use Canadian copyrighted compositions, but we are asked and requested to use them, and we do it as a matter of obliging the Canadian composer, just as we obliged Mr. Burpee in letting him speak on Canadian fiction, which is considered in the public interest.

Q. Why don't you make a bargain with them?—A. Because it is not necessary to make a bargain. We, as I say, are operating without any direct profit; we are operating this station as a means of advertising the railways, pure and simple.

Q. My idea of this law is this, purely and simply, that anyone, any corporation, anybody that does not get an interest or gain, direct or indirect, out of this, should not pay, and if the C.N.R. goes along and says, "We have no interest, we made no gain", then you will not pay and you do not pay, but if you did make a gain in any way, why refuse to pay?—A. You must remember, Mr. Chevrier, that by common law you had no such rights. People who had copyright could not, for instance, prevent anybody broadcasting or hiring the

[Mr. Norman Guthrie.]

town hall and reading their novel and so forth. That is decided, as you are perfectly aware, as a matter of common law. You have come to Parliament and had a statute passed, and anything you get will be under a statutory provision and an act of grace from Parliament.

Q. Does not section 16 cover the whole of that? Do you mean to say, "Copyright in a work shall also be deemed to be infringed by any person who, in consideration of an admission fee, permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware and had no reasonable ground for suspecting, that the performance would be an infringement of copyright."—A. You will find also—

Q. That is the law?—A. That is the statutory law, as I say.

Q. But it says, "Without the consent of the owner of the copyright, unless he was not aware and had no reasonable ground for suspecting that the performance would be an infringement of copyright."—A. By this Act. I was going to say that is the point, by this Act. At common law you do not have any such right; you come to Parliament and you get these rights, and as you know the rule of construction of law is that your rights must be strictly construed, and when you come back to Parliament and ask for further rights you have to make out a further case.

Q. If I were to strike out this section from the Act, if I did not put that in at all, what would be my position?—A. You would be under the old Act.

Q. No, I beg pardon; if I did not put section 4 (g) there, if I did not define broadcasting, in what position would I be? I would be under the old Act, and the definition, as you know, does not interfere one iota with the statutory enactment. It is the statute you have to come under.—A. Then we are quite at one, because I say if you leave the 1921 Act as it is, I have no objection; we do not come under it.

Q. If I had not put that section in, there are a number of lawyers and a number of people who would never have known that there was a stipulation in the Criminal Code protecting my rights.—A. That is exactly my argument.

Q. But because the sword is in the scabbard is no reason why I should not use it as I feel like it?—A. You are using the sword Parliament gave you in 1921, and you are coming to Parliament now for a new weapon against the public, to acquire rights you have not got, and to interfere with rights which we have, to broadcast these copyrighted productions as we may see fit.

Mr. CHEVRIER: That is not my contention.

Mr. LADNER: Mr. Guthrie and Mr. Chevrier do not have the same opinion on this as lawyers, and we have heard what Mr. Guthrie's opinion is. I am almost inclined to think he is right, myself, and Mr. Chevrier told us at the start that the sole purpose of this Act was to reproduce the existing law, not to alter it.

Mr. CHEVRIER: That is true.

Mr. LADNER: If there is a question of altering the law, we are surely placed in an entirely new situation. We have Mr. Guthrie's opinion now.

The WITNESS: Mr. Chairman. I do not wish to prolong my remarks, but I would like to say this, that if you do see fit to leave the law as it is, that is satisfactory to us; if you see fit to adopt the amendment proposed by Mr. Combs, that is equally satisfactory, that copyright provisions shall not apply to broadcasting. If, on the other hand, you should adopt the policy of protection to authors and so forth, then I would respectfully ask in the public interest that a clause be inserted to the effect that the provisions shall not apply to the broadcasting stations of the Canadian National Railways.

[Mr. Norman Guthrie.]

By Mr. Chevrier:

Q. Why?—A. That is just what I was going to say, because they are not in any way associated with the trade; they have nothing whatever to do with the manufacture of broadcasting appliances, material, or instruments; they are operated entirely as a public enterprise for the benefit of the National Railways and for the benefit of the public, and I submit that in these circumstances they should be excluded from any restrictive legislation.

By Mr. Irvine:

Q. May I ask you a question before you go? In the Canadian National broadcasting, could you give any idea of how many people, say in the United States, would be listening in?—A. I have here Mr. MacMurtry and Mr. McIntyre; they might have the figures to reply to that, but in a general way I might say that we receive communications from thousands of people from far south of the line; I cannot give you the exact figures because they are impossible to obtain.

Q. Some Canadian song writers, however, think that the stations, if I can put it that way, of which you are the distributing centre, are good advertising sometimes for their songs?—A. That is the view I would personally take, and I think those who take it are correct.

Q. Supposing this law was put into effect, could not American song writers come into Canada and take a copyright on their works in Canada and receive the same benefit as the Canadian song writer?—A. That, of course, would be a question of the Copyright Law.

Mr. O'HALLORAN: What is that?

Mr. IRVINE: Could not the American song writer copyright his songs in Canada and receive the same benefits as a Canadian?

Mr. O'HALLORAN: Under the arrangement with the United States, authors in Canada get United States protection by their copyright in Canada.

By Mr. Irvine:

Q. You use five per cent of Canadian songs now, and you would be protecting the United States song writer 95 per cent and the Canadian five?—A. If that were the fact. In connection with Mr. Irvine's question I might file as an exhibit with the Committee a letter which Mr. McIntyre has just handed me, which illustrates what we have been discussing. It is from a music publishing house, and is as follows:—

I am mailing you under separate cover an orchestration for "The Smile o' Molly Maloney," which has already gone to our general broadcast, but we wish to make sure that all our best men are sure to be behind us on this little song—

and so on. Mr. McIntyre is leader of the orchestra which broadcasts at the Chateau and it illustrates the attitude of the song writers towards this beneficent broadcasting which we do.

By Mr. Irvine:

Q. Just one more question: In your opinion would these clauses be practicable of enforcement?—A. You mean the general amendments?

Q. Yes. Supposing a ploughman in the bush whistled "It Aint't Going to Rain No More", who would collect from him?

Mr. CHEVRIER: Nobody, because there is no personal profit, gain or interest.

Mr. IRVINE: Suppose that makes him able to plough better and work harder, and reap a bigger crop, he is getting more profit.

The WITNESS: The only remedy would be to indict him as a public nuisance. You were asking me whether I thought this clause is practicable, and I have already said that I do not think so.

[Mr. Norman Guthrie.]

By Mr. Chevrier:

Q. Why not?—A. You would have to prosecute us for broadcasting a certain song or composition by a certain person, and you would have to show that the gain or interest which the Canadian National Railways had, related directly to the subject matter of the prosecution.

Q. And if I failed in that—A. You would fail; there is no question in my mind on that.

Q. I am willing to take my chances. But supposing Mr. Ladner or Mr. Irvine operated it, I might have a better chance to show there was a gain?—A. Mr. Chevrier, my point of view is that it would not be in the public interest for Parliament to put a clause in the Act which would invite prosecution of the Canadian National Railways stations which, in my opinion, would be frivolous.

The CHAIRMAN: Do we not understand Mr. Guthrie's position thoroughly? We have one more witness to hear.

Mr. CHEVRIER: I have just one other question I would like to ask.

By Mr. Chevrier:

Q. You say there is something in that Act which I would not be able to prove were I suing the Canadian National? Then why should I not take out of the Criminal Code all the words "knowingly," because I am liable to run up against a case where I cannot prove anything "knowingly"?—A. The word "knowingly" has been the subject of a line of judicial decisions for your guidance, and I think it is very easy to establish the value of the word "knowingly" in each particular case.

Q. Do I understand your stand to be then that, so far as you are concerned, you have no interest other than in the Canadian National?—A. That is all.

Q. And you are satisfied that in any case where there is a gain there ought to be a royalty?—A. I am not satisfied on that at all, because I have nothing to do with it.

Q. You think, at all events, that the Canadian National should be excluded?—A. At all events it should be excluded, but it would not be fair to ask me to prejudice the case of some other person who appears before this Committee.

By Mr. Lewis:

Q. You have not attempted to establish your case on the point that the Canadian National does not make a profit?—A. No. I was going to say that I merely pointed out what would be Mr. Chevrier's difficulty when he got to court.

Mr. CHEVRIER: Well, let me swim then.

By Mr. Lewis:

Q. The further case would be then that they would have to prove that the profit was due directly to this copyrighted song?—A. That is my view. I have no doubt that the operation of the station means a profit to the National, but it has to be relevant to the prosecution in hand.

Mr. CHEVRIER: I am willing to take that chance.

By Mr. Lewis:

Q. In the third case then, it would be detrimental to your broadcasting stations as a whole?—A. It would be much wider than that; it would be detrimental to the broadcasting stations, the authors of Canada, and the public at large.

Q. Would you have to apply that to the author as well as to the man who sang this song? You would have to pay a royalty as the man operating the broadcasting station, as well as the man who sang the song? It would be the man in charge of the broadcasting station and the man who sings?

Mr. CHEVRIER: It all depends on the bargain.

Mr. LADNER: You could hardly expect a man to come along and find out where the author is, in order to pay him the royalty.

The witness retired.

JAMES E. HAHN called and sworn.

By the Chairman:

Q. Whom do you represent?—A. The De Forest Radio Corporation, and I am a member of this Committee of which Mr. Combs is the Chairman.

By Mr. Ladner:

Q. You represent whom?—A. The De Forest Radio Corporation.

By Mr. Chevrier:

Q. What is the De Forest, Mr. Hahn?—A. We are manufacturers of radio equipment and accessories. It was not my intention to speak on coming here, but this discussion has brought up one or two points that I think we should emphasize as radio manufacturers. To put it briefly, it is this: we must not forget that radio, as a whole, is a new industry, and we are passing through the days of pioneering; that all that glitters is not gold. We do not know just where we can lay our fingers on a good many things, and the causes and the results of broadcasting are some of them. I can tell you frankly we are at the present time erecting a broadcasting station, which will involve a considerable investment; that is, the installation and operation of this station.

Q. Where, Mr. Hahn?—A. Just outside Toronto.

By the Chairman:

Q. Approximately how much will it cost?—A. We think the erection of the station will involve somewhere between \$15,000 and \$20,000, and the operation we think will run somewhere in the neighborhood of \$20,000 a year. We can also tell you in perfectly good faith that we do not see an immediate return from that station—any profit. My investigation of the stations in operation has led me to hope it will show a return, but owing to the newness—the very newness—of this industry, we cannot yet place our fingers upon the profit from broadcasting. In other words, the very big question that is before the radio industry to-day, and of which we would like a solution, is who is going to pay for the broadcasting.

By Mr. Lewis:

Q. Will not this station advertise your De Forest machines?—A. That is true.

Q. That will be placed before the public at every performance?—A. That is true, but what I am trying to get at is this, that in the actual dividing up, in the showing of a specific profit, the average broadcaster does not know exactly where he stands. We are all taking a gamble on that, and we hope it will ultimately be a profitable gamble, but as yet it is a gamble pure and simple.

By Mr. Chevrier:

Q. And you desire to gamble with the authors' heads?—A. No, we do not. I hope I will not be drawn into a discussion on that, for this reason; we can bring up the very point I have in mind, that it is difficult to allocate the advantage that the artist receives in proportion to the advertising received. What the answer is to that, I do not know.

By Mr. Lewis:

Q. Have you not patents on your De Forest machine?—A. Yes.

Q. And no one else can make those machines? You have that exclusive privilege?—A. We hope so.

Q. And from your own standpoint you are able to operate a better machine as a result of your patents?—A. Yes, but finally, as legislation now stands, we feel we are liable, at least, to prosecution without any question. That is my personal opinion, that we are liable to prosecution under the Act as it now stands, or is contemplated.

Q. Then you differ from Mr. Guthrie?—A. Yes, I do, and I say that what we require at the present moment in this new industry is protection, so that it can stabilize and gravitate down to a basis where these very questions will adjust and solve themselves.

Q. Do you consider that this new Act or this new amendment that was brought in this morning is making the situation worse than this old Act—A. It does not help it any; it leaves us open to immediate prosecution the minute we come on the air.

Q. And the old Act did the same?—A. The old Act did the same. We ask for the amendment which has been suggested here by Mr. Combs as an absolutely essential protection for us, and we ask that protection until this industry gravitates to a point where problems of this kind can be solved. That is the only point I wish to make.

The CHAIRMAN: Thank you, Mr. Hahn. Now, gentlemen, that concludes the evidence for this morning.

The witness retired.

The Committee then adjourned until Tuesday, March 17, at 10.30 a.m.

TUESDAY, March 17, 1925.

The Special Committee appointed to consider Bill No. 2, an Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Hocken, Hoey, Irvine, Ladner, Lewis, McKay, and Rinfret.

In attendance:—Mr. George F. O'Halloran.

The CHAIRMAN: We have some communications which the Secretary will read.

The CLERK: This is a telegram received from Mr. F. F. Appleton:—

“Toronto, Ont., Mar. 14, 1925.

W. G. Raymond, M.P.,
House of Commons,
Ottawa.

“On reconsideration of effect of the book licensing provisions of Copyright Act, I have come to the conclusion that these clauses may be injurious to the interests of authors and publishers. While publishers should print in Canada whenever it is practicable to do so, it is possible that if the book licensing clauses come into actual operation, of which we have had no experience yet, they may demoralize the book publishing trade to authors detriment. Magazine serial licenses are on a different footing and do not affect book publishers. Stricter importation provisions will do much to make printing of Canadian editions feasible. I wish to withdraw any statements in my evidence opposed to these views.

(Sgd.) F. F. APPLETON.”

[Mr. James E. Hahn.]

The CHAIRMAN: There is also a letter from Mr. Appleton corroborating that telegram.

The CLERK: (Reads).

"THE MUSSON BOOK COMPANY, LIMITED, TORONTO

March 16th, 1925.

W. G. Raymond, Esq., M.P.,
Chairman, Special Copyright Committee,
House of Commons,
Ottawa, Canada.

Dear Sir,—Since my return from Ottawa I have given much further thought to the subject of the compulsory licensing clauses applying to books in our Canadian Copyright Act, with the result that I wired you on Saturday, as follows:

'On reconsideration of effect of the book licensing provisions of Copyright Act, I have come to the conclusion that these clauses may be injurious to the interests of authors and publishers.

While publishers should print in Canada whenever it is practicable to do so, it is possible that if the book licensing clauses come into actual operation, of which we have had no experience yet, they may demoralize the book publishing trade to authors' detriment. Magazine serial licenses are on a different footing and do not affect book publishers. Stricter importation provisions will do much to make printing of Canadian editions feasible.

I wish to withdraw any statements in my evidence opposed to these views.'

On analyzing my own views on the subject, as expressed to your Committee, I have come to the conclusion that they were prejudiced to a great extent by the existing copyright regulations of the United States, and I felt that the licensing clauses would operate where practicable as a manufacturing clause. On reconsideration, however, I realize that the Canadian author is not responsible for these United States regulations, and I have come to the conclusion that the compulsory licensing clauses may not accomplish what I had in mind, and they may be very undesirable. In the event of their being used extensively they would upset contractual rights between author and publisher, and thereby demoralize the book publishing trade in Canada to the detriment of authors and publishers.

My remarks before your Committee were only applicable to works for which the demand was sufficiently large as to make printing in Canada commercially possible, and I had no desire that these provisions should apply to all Canadian books, many of which are not sold in large enough quantities to produce separate Canadian editions in the first instance.

While the number of Canadian printers is large, the number of those equipped for and manufacturing books is small, and in reality confined to a small group in Toronto. I must admit, therefore, that very few printers could possibly benefit by the licensing clauses while all the authors of the Dominion might suffer by them.

My evidence I now perceive was in reality given from the printer's point of view, and I am bound to confess that looking at the question solely as a publisher, I do perceive dangers to the author's rights which it is not fair to subject them to, and which I had not sufficiently appreciated.

I feel that a very practical assistance to both printer and publisher, and one that would not affect the author in any way, would be to prevent any one but the owner of the Canadian copyright from importing copies into Canada. This would give the Canadian publisher a freer hand to print in Canada whenever he thought the sales of a book would justify that being done.

For these reasons I am desirous of qualifying the statements made before your Committee, and I withdraw any statements opposed to these views.

Yours very truly,
(Sgd.) F. F. APPLETON."

The CHAIRMAN: It is suggested that as Mr. Appleton has had copies of the evidence and he desires to correct his copies of the evidence, that he send us an amended copy for our consideration. Would that meet with your approbation?

Mr. McKAY: I think he ought to be asked to be heard before this Committee again to see what evidence he will give on his second appearance.

Mr. RINFRET: Will that letter be printed in the evidence?

The CHAIRMAN: Yes, we thought that all communications had better be printed in the evidence—that is, those which bear on the question.

Mr. CHEVRIER: There may be something in that but may I make a suggestion? If all the correspondence which is addressed to the Chairman is to be printed, I think all the correspondence addressed to members of this Committee should also be printed. There may be some very damning statements made in some of this correspondence, and I have no means of checking it up by means of cross-examination. That is the danger.

Mr. HOCKEN: I don't see that we should print anything that has not been laid before the Committee.

Mr. CHEVRIER: I think, Mr. Chairman, that the way would be if anyone wants to take the responsibility of appearing and producing letters he should do so in order that he may be examined on the contents of his letters. I would have no objection to that, but there must be some way of checking up the statements that will be made in these letters. I have letters here I would like to get in, and I am prepared to bring witnesses to identify them.

Mr. McKAY: Is it not possible that in two or three days Mr. Appleton might change his mind again?

The CHAIRMAN: Do you think it would be better to have Mr. Appleton appear again before this Committee?

Mr. McKAY: I think so, yes; if he wishes to withdraw his statements made under oath.

The CHAIRMAN: Is that the wish of the Committee? (Carried)

Mr. CHEVRIER: I would suggest that he be asked to come down here and make another statement and if he does not care to come that the whole of his evidence be struck out and considered as though it had not been given.

The CHAIRMAN: Are there any further communications?

The CLERK: I have noted the following with regard to communications which might properly be laid on the table, and be available to the Committee.

They do not seem to be very, very important at this stage of the proceedings. The first is: From the French-Canadian Amateur Radio Club, "Branly", Montreal, protesting against restrictive legislation regarding high-class concerts and drama; second, from the Whaley Ryce and Company, Limited, Toronto, favouring the Copyright Act, 1921; third, from the Canadian Musical Development Association, Mr. C. H. Leslie, Toronto, suggesting an amendment to section 16 of the Act; fourth, from Mr. Ballantyne, Brantford, in respect to broadcasting; and fifth, from the Ottawa Amateur Radio Association in respect to broadcasting.

The Chairman has handed me other communications here, which he desires to have read.

Mr. LEWIS: I think we have all received these communications and I do not know whether it is worth while filling up the evidence with these things which we all have before us, unless it appears necessary. Most of us have these letters sent to us. Unless of course it would be for the information of the rest of the members of Parliament.

The CHAIRMAN: Would the Committee consider it sufficient if they be laid on the table?

Mr. McKAY: Personally, I would like to have them all incorporated in the evidence.

Mr. CHEVRIER: The only trouble is if you put them in holus bolus there may be statements there detrimental to your views; statements upon which you would like to get correct information, and you cannot do it. If I were to put in some of the letters I have received—

The CHAIRMAN: The Secretary informs me that it is not customary to print all the communications, as it would make the record very voluminous. Perhaps if they are laid on the table; if later on it is thought advisable to incorporate them in the evidence, it could be done afterwards by way of an appendix.

The CLERK: There is another communication here from Mr. Maclean, of South York:

OTTAWA, Ont., March 16, 1925.

"Mr. W. G. Raymond, M.P.,
Chairman Copyright Committee,
House of Commons.

Dear Sir,—I enclose you a letter from a constituent of mine in regard to the rights of authors, now before your special committee.

I agree with his view as against those advocates in the raiding of the authors' rights.

Your faithfully,
W. F. MACLEAN."

And the letter to which this refers is as follows:

"Locust Hill,
March 12-25.

"The Hon. W. F. McLean,
House of Assembly,
Ottawa.

Dear Sir,—In pursuance of Bill Number Two known as the 'Right of Authors Bill' now being considered by a special house committee I

wish to register my disapproval and point out the detrimental effect this law would have upon a new and vital Canadian industry and in my humble opinion consider it an inopportune time for Canada to take a stand upon this question pending a final adjudication by the United States.

Therefore as the representative from this constituency I wish to ask you to use your influence to draw the committee's attention to the harm Bill No. 2 will do if made law.

I remain,
Respectfully,
R. L. Wilby."

The CHAIRMAN: These will be put with the other communications, and if desirable at a later date may be reprinted in the form of an appendix.

The CLERK: Mr. Stirling, M.P., has placed in my hands a communication which he asks to have read. It is as follows:

"KELOWNA, B.C., March 7th, 1925.

"GROTE STIRLING, Esq., M.P.,
Parliament Buildings, Ottawa.

Dear Sir:—We beg leave to confirm our night lettergram of even date as follows:—

'Kelowna Radio Association strongly opposed to Bill introduced in Parliament which requires a royalty to be paid on every piece of copyrighted music broadcast by radio stations stop This would tend to drive Canadian broadcasting stations from air and leave way clear to American stations stop Canadian stations are giving very valuable service free of cost to general public and should be given every encouragement.'

As you know, our Association is composed of those citizens in the Kelowna District who own radio receiving sets, and we are unanimous in testifying to the instruction and pleasure we receive from the commercial broadcasting stations. We submit that, instead of being placed to additional bother and expense, such stations should be given every assistance by the authorities.

Yours respectfully,
Kelowna Radio Association,
W. A. SCHOLL,
Secretary."

The CHAIRMAN: We will leave that with the other communications.

Mr. LADNER: Mr. Chairman, with respect to these communications: In the last analysis, they really constitute evidence; they are the evidence of people far away, sent in instead of having some representative come here to give verbal evidence. I was going to suggest in order that we may know at the end how voluminous this correspondence will be, and if we so desire, it may be printed as an appendix to the evidence.

The CHAIRMAN: I think that is the wish of the Committee, Mr. Ladner. Will someone make a motion to that effect?

Mr. LADNER: I will make that motion.

Mr. HOEY: I will second it.

Motion agreed to.

The CHAIRMAN: Gentlemen, are there any other motions? If not, we will proceed to the taking of further evidence.

E. BLAKE ROBERTSON called and sworn.

By the Chairman:

Q. Whom do you represent, Mr. Robertson, on this occasion?—A. First of all, the makers of phonograph records; secondly, the Ryerson Press; and thirdly, if questioned, the radio broadcasting stations with the exception of the C.N.R.

By Mr. McKay:

Q. You do not represent the C.N.R.?—A. No, sir.

By Mr. Chevrier:

Q. Why not?—A. We are not in agreement with their views. They ask for the special privilege of the C.N.R. and only the C.N.R. having the right to broadcast free the copyrighted music. We think our case is either good or bad; if good, in the opinion of Parliament, we should profit; if bad, nobody should get it. We see no reason why the C.N.R. should have special privileges denied to others. There are dozens of cases which I might name.

Industrial interests which have appeared before this Committee confined their remarks to voicing objections to the particular sections which did not meet with their approval. Authors dealt only with the controversial sections. Lest the Committee should regard opposition which has been voiced as opposition to the bill as a whole, may I state that our position is not of that character. We are perfectly willing to see made whatever changes are necessary to prevent infringement and to punish infringers. These phases constitute in bulk the main portion of Bill 2, and to these phases you will note no opposition has been voiced by any industrial interest. We realize that if the required changes in this regard are not made this session the authors will likely be before Parliament again next year to present their case, and an annual dispute is not desired. Legislation has been up in the sessions of 1919, 1920, 1921, 1923, 1924 and again this year. With a Committee examining the subject as fully as has been the case this year we think the question should be settled once and for all or at least settled for many years. We, therefore, wish to make plain that we do not wish to kill the bill but merely to have it amended along the lines which are for the good of Canada nationally.

Now, I am coming to the viewpoint of the evidence given at previous sittings.

By Mr. Ladner:

Q. Do you say that the previous statutes were repealed?—A. All Imperial legislation relating to copyright in Canada was repealed by the 1921 legislation. They did not specify the Act; they did not say "We repeal the Imperial Copyright Act of 1842 or the Act of 1886"; they did not specify any particular legislation at all; they just said, "We repeal all Imperial legislation relating to copyright."

Now, section 47 of the Act provides:

"All the enactments relating to copyright passed by the Parliament of the United Kingdom are, so far as they are operative in Canada, hereby repealed."

[Mr. E. Blake Robertson.]

I was before the Committee that dealt with the subject at that time, and I understand that the reason they adopted the phraseology they did, was that there was a great difference of opinion as to what acts applied only to England and what acts likewise applied to Canada. Without doubt everybody admitted that everything that was passed prior to 1867 did apply to Canada, but there was a period between 1867 down to 1910 when there was a grave doubt as to the power of Canada to legislate on copyrights. It was a question whether or not copyright should not be dealt with Imperially, or whether it was a subject which properly devolved to each of the self-governing dominions. That occasioned a visit of several Ministers of Justice to England and the gathering together of numerous conventions where the question of copyright was discussed, particularly as it referred to the rights of the self-governing dominions. Sir John Thompson took a very strong stand on the matter. Mr. O'Halloran might give you the details now; I could have at one time—

Mr. O'HALLORAN: You are as familiar with them as I am.

The WITNESS: Sir John Thompson took a very strong stand on the rights of Canada to deal with copyright legislation, which stand was followed in almost precise terms by the Hon. Sidney Fisher, who, incidentally, was an extremely strong advocate of the Berne Convention, provided that, while adhering to the Berne Convention, we might likewise have manufacturing clauses which would protect the printing industry in Canada. However, the point is this, that all of these Imperial Acts were repealed. Now, Mr. Chevrier proposes not to bring back into force the Acts which were repealed, but to bring into force two Acts which never, at any time up to the present, have applied to Canada. More than that, he proposes bringing into force two Acts which, for the life of me, I cannot see are of any value to the publisher, to the printer to the author, or to anybody else.

By Mr. Chevrier:

Q. Well, what is your idea in making the kick?—A. We do not want to load our statutes that way. It would make us similar to the music hawkers of the Strand. That is about what the Music Act is. I will read the last paragraph of an extract from the Music Act:

“This Act may be cited as the Musical Summary Proceedings Copyright Act 1902, and shall come into force on the 1st day of October, one thousand nine hundred and two and shall apply only to the United Kingdom.”

By Mr. Ladner:

Q. Is that what the Act is?—A. I am reading from a reprint of the Act; it is a correct reprint.

By Mr. Rinfret:

Q. It could not possibly apply to Canada?—A. It most decidedly could apply to Canada if Bill 2 becomes law, section 13 of which contains a proviso—

Mr. HOCKEN: That section proposes to bring it into effect in Canada.

Mr. RINFRET: It says it cannot be applied outside of the United Kingdom

The WITNESS: Section 13, page 11, subsection 25 E, says:—

“Notwithstanding anything contained in Section 47 of this Act, the provisions of the Musical ((Summary Proceedings) Copyright Act, 1902 (Imperial Statute 2, Edward VII, Chap. 15) and of the Musical Copy-

[Mr. E. Blake Robertson.]

right Act, 1906 (Imperial Statute 6, Edward VII, Chap. 36) *mutatis mutandis* shall apply as respect musical works protected under this Act."

By Mr. Ladner:

Q. Have we anything of that nature in the Statute now?—A. It is largely penalty clauses. The penalty clauses existed apparently, in the opinion of Parliament, to a sufficient extent in 1921 to protect anyone who might be adversely affected.

Q. Is it your idea we should specify the wording of the clauses in detail in any law we pass, rather than refer to the Act?—A. If Parliament sees fit to adopt every section in the Musical Summary Proceedings Act, I have no objection to it.

Q. Are there sections in the Imperial Act which might be advantageous in Canada?—A. I think when Mr. Chevrier's Bill 2 is adopted, after he cuts out section 5 and section 15, and the other ones we object to, there will be more penalty clauses in the legislation in Canada than exist in any other two countries combined.

By Mr. Chevrier:

Q. And to which you make no objection?—A. No. I am here representing law-abiding citizens, and we have no interest in the infringers. Go as far as you like against the infringers. The more you hurt them, the more business there will be left for the legitimate interests to do.

By Mr. Ladner:

Q. Speaking for those whom you represent, you have no objection to the subject matter of these clauses in this legislation?—A. I did not examine them very closely, but they all seem to have to do with infringing, and, as I say, we have no interest with the infringers; go as far as you like.

When on Friday last Mr. Berliner appeared before this Committee he requested in connection with phonograph records, eight amendments to the copyright legislation. Five of these requests Mr. Chevrier regarded as reasonable. When both parties to a dispute reach the same conclusion I presume the Committee will regard such agreement as sufficient justification for accepting such proposals and no further comment on these five amendments appears necessary.

Mr. Chevrier took objection to the request that the Committee strike out subsection 25 (e) in section 13. When the 1921 Copyright legislation was enacted section 47 of same provided for the repeal of:—

"All enactments relating to copyright passed by the Parliament of the United Kingdom so far as they are operative in Canada."

No enumeration of these various Acts was made. The Imperial Acts in force admittedly were the Act of 1842 the Act of 1844, the Act of 1852 and possibly and likely some others. To make sure that Parliament was accomplishing what it intended, all enactments were repealed. The repealed enactments did not include the Musical (Summary Proceedings) Copyright Act of 1902 because that Act had never been in force in Canada; the repeal did not include the Musical Copyright Act 1906 because that Act had never been in force in Canada. It would be a retrograde step to bring back into force in Canada Imperial statutes which have been repealed as the general tendency is for the Canadian Parliament to make Canadian law. It would be worse than a retrograde step to bring into force by a single section an Imperial Act which was never in force in Canada. It is submitted that for these reasons alone Clause 25 (e) of section 13 should be reported against by this Committee.

The request that section 18 of Bill 2 be cancelled was likewise objected to by Mr. Chevrier. This section proposes the revival of all copyrights which expired between July 1, 1912 and January 1, 1924. In paragraph 2 of Article 18 of the Revised Berne Convention of 1908 it is distinctly provided that:—

“If, however, through the expiration of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work should not be protected anew in that country.”

Certain works fell into the public domain in Canada between July 1, 1912 and January 1, 1924. To revive these expired copyrights would be in distinct contravention of the Berne Convention section just quoted. For this reason, if for no other section 18 should be reported against by the committee.

As section 19 must stand or fall with section 18 no comment on it is necessary.

As reported on page 23 of the evidence, Mr. Appleton asked for the repeal of the proviso to section 11 (2) of the present Act. This is a direct interference with the right of every author who has copyright under the Canadian Act. He is absolutely barred from disposing of his rights as he sees fit. He is in fact made a ward of the state, placed in the same class as the Indian or the minor. This proviso in addition to being somewhat of an insult to the intelligence of the author and a slur on his ability to handle his own affairs, operates to his immediate financial loss. If he wishes to dispose of his entire rights he is prevented by law from so doing. Naturally a publisher who can only obtain a lease is not willing to pay as much as he would if he could make an outright purchase of the copyright for its full duration. For reasons best known to themselves the authors have not asked in Bill 2 for the rectification of this interference with their rights. Indirectly, however, they approve in principle as on page 4 Mr. Burpee is reported as saying:

“As far as the Canadian authors are concerned they should surely be the best judges as to what is best for themselves.”

Mr. de Montigny is reported in the evidence on page 68 as stating:—

“The authors claim the right of managing their own affairs.”

The repeal of the proviso to section 11 (2) is therefore respectfully requested.

By Mr. Ladner:

Q. What section are you referring to?—A. Our Copyright Act, section 11, the proviso to subsection 2. The author cannot sell; he can give a lease for 25 years after his death, which leaves 25 years uncovered which he is unable to dispose of. Being limited to that extent, he naturally gets less money when he sells. And if the authors are so anxious to protect their full rights, and to be accorded their full rights, here is a case where every author is touched; it is not a case of one author out of a thousand or one every six or seven years, like the licensing clauses, but it is a case of every author every day.

By Mr. Chevrier:

Q. I agree with you, but if that is copied verbatim from the British Act—A. If he puts himself in the same class as it is alleged the British authors did, that is for him to decide.

Q. Those who drafted the Canadian Act took from the British Act anything that was a curtailment of the authors' rights? There is no evidence of that.—A. I am out to back up the authors because their interests and our interests are along the same lines.

By Mr. Ladner:

Q. The authors do not appear to be concerned with subsection 2?—A. Their wail has been that their rights are being interfered with; they are not being accorded their full rights. I point out a case where their rights are seriously being interfered with 365 days out of the year; not in a particular case of an author, but every author who has copyright in Canada.

By Mr. Chevrier:

Q. Are you moving to amend that?—A. I have no power to move anything. I am asking the Committee to strike out that proviso to 11 (2).

Q. I agree with you—A. I was going on to point out that the authors were taking the same stand, because Mr. Burpee says, "As far as the Canadian authors are concerned, they should surely be the best judges as to what is best for themselves", and Mr. de Montigny is reported as saying on page 68. "The authors claim the right of managing their own affairs."

Mr. LADNER: Was this clause considered?

Mr. CHEVRIER: It was considered, but we made no move to change it. It is not what we would like it to be, but we can make an amendment in Committee.

Mr. LADNER: But this bill has gone to the public in its present form, and there may be some interests of whom we do not know. That would be a dangerous thing to do.

Mr. CHEVRIER: But, as a result of this discussion, when we get into camera—

Mr. LADNER: Is there not something else behind it that some of us more innocent persons do not know?

Mr. CHEVRIER: No, we did not come to that conclusion.

The CHAIRMAN: If you will keep it in mind until we come to discuss it among the members of the Committee, it could then be mooted.

Mr. O'HALLORAN: If I might be permitted, Mr. Chairman, to say a word here, in drafting the bill, the drafters had in mind the bill which was originally introduced in 1919, and in order to get the benefit of the British Copyright Act, our Act had to be substantially the same, and consequently, unless he found some very strong reason for doing otherwise, he adopted the British text. Our Act was found to be substantially identical with the British Act, and we got the benefit of the British Act. Now, I think we should still keep that in mind in making any amendments. Unless we find that the present text is objectionable, we had better leave it as it is; otherwise the British authorities might come back at us and say, "By your changes, your Act is not substantially the same as ours, and consequently we cannot give you the benefit of our Act." Anything like that, I think, should be very seriously considered by the Committee.

Mr. CHEVRIER: In answer to that; if we have to keep our Act in the same principles as the British Act, why did you make the registration compulsory in Canada when there is no registration under the British Act?

Mr. O'HALLORAN: That is entirely optional.

Mr. CHEVRIER: And there are licensing clauses in our Bill which are not in the British Bill, and that would change the spirit of the Act. If the authors and publishers and printers agree, as I am prepared to agree, that the reservations of 25 (6) should be struck out—

[Mr. E. Blake Robertson.]

Mr. O'HALLORAN: I think you are in error in regard to registration. Our provisions of registration are purely optional.

Mr. CHEVRIER: Quite, but the British Act does not contain registration; the British Act does not contain licensing clauses; so that is no reason why we should amend it.

Mr. O'HALLORAN: After our Act went into force, it was passed upon by the British authorities and found satisfactory as being substantially the same as their own Act. As to the licensing clauses; they did not bother with them, because they did not apply to them; they applied only to the Canadian people and to others in whom they had no interest.

Mr. HOCKEN: It did not apply to anybody in the Berne debate.

The CHAIRMAN: I think we might leave that until the Committee meets to discuss the actual bill.

The WITNESS: I might give one word in answer to what Mr. O'Halloran has said. To my mind, it is unthinkable that the Imperial Government should object to the action of this Government which would tend to bring our legislation more in conformity with the Berne Convention than it is now. The proviso of 11 (2) is much more a contravention of the Berne Convention than are our licensing clauses; it is a contravention against the rights of every author 365 days of the year. It is the most glaring kind of a contravention of the Berne Convention that you could find.

By Mr. Ladner:

Q. What is the provision of the Berne Convention on that?—A. The general term of the Berne Convention is that the author controls his works absolutely. That is the Berne Convention in a nutshell.

Q. How long after his death?—A. The recommendation to nations is fifty years after he dies, but each nation is not absolutely bound to that length of time. Under the old Imperial Act, it was forty-two, or seven years after death, whichever might be the longer period. It made it sometimes eight and sometimes only one year longer.

Q. After the twenty-five years then section 8 will cover it? Are you dealing with that now? What is the next point after 25E?—A. I started to deal with this first from the standpoint of the question of records, and secondly from the standpoint of books, so I jump back and forth.

There has been a tendency before this Committee to minimize the good effects of the compulsory printing provisions of the Canadian Copyright Act in force prior to January 1, 1924, Mr. Burpee (page 5 of evidence) said:—

“The old Copyright law of Canada contained for years what amounted to substantially the same provision and I am informed it remained a dead letter.”

Mr. Chevrier at the top of page 42 of the evidence said:—

“There was not one book printed in Canada during the regime of the old law.”

The Act provided:—

Sec. 6. “The condition for obtaining such copyright shall be that the said literary, scientific or artistic works shall be printed and published or reprinted and published in Canada, or in the case of works of art that they shall be produced or reproduced in Canada, whether they are so published or produced for the first time, or contemporaneously with or subsequently to publication or production elsewhere.”

[Mr. E. Blake Robertson.]

As the Act provided for registration of copyright it is easy to ascertain the number of works which secured copyright under the Canadian Act and which were as follows:—

1906..	1130	1915..	1675
1907..	1228	1916..	1477
1908..	1140	1917..	1384
1909..	1416	1918..	1440
1910..	1535	1919..	1436
1911..	1699	1920..	2028
1912..	1593	1921..	1729
1913..	1760	1922..	1465
1914..	1835	1923..	1591

I have here four books which illustrate what I mean. The first is, "The Farmers in Politics," by William Irvine, a member of this House, printed by the McClelland & Stewart Limited, of Toronto; Burbidge's "Digest of Criminal Laws of Canada," printed by Carswell & Company, law publishers, Toronto; "Speeches and Addresses," by John Charlton, published by Morang & Company Limited of Toronto; and "Rural Life in Canada," by John MacDougall, printed by the Westminster Company Limited, Toronto. I could easily stack the table from one end to the other with works printed in the same way.

By Mr. Chevrier:

Q. Is it not true that the whole of Carswell's library, and all of Musson's, and even the Law library, have been printed in Canada, but will you show me one book—just one book—from 1886 to the 31st of December, 1923, that was printed in Canada by reason of the exercise of compulsory printing? Can you do that?—A. The only way in which they could secure Canadian copyrights under the Canadian Copyright Act was by printing in Canada—

Q. Wait a moment. We don't want to get excited over this?—A. I am not a bit excited.

Q. There were the two laws—A. Yes.

Q. (Continuing)—the one of 1875, which might be called the domestic law of copyright?—A. Yes.

Q. So that in order to be protected in Canada, one had to print in Canada?—A. Yes.

Q. Then by Canadian adhesion to the revised Convention in 1886, the International law was made applicable to Canada?—A. No, I don't admit that.

Q. Was it not, as an effect of Canadian adhesion to the Convention of 1886, that Canadian authors who printed anywhere else were protected in Canada?—A. No, that is not the point at all.

Q. And those who printed in Canada printed because it suited themselves to print in Canada, but—and let us be honest about this—is there any book that was printed in Canada under compulsory license as compared to the licensing clauses of to-day? It is true there are stacks of books—millions of books—between 1875 and 1924, but show me one book that was printed in Canada by reason of this compulsory license?—A. I will read the compulsory provision. Section 6 says:—

"The condition of obtaining such copyright shall be that the said literary, scientific, and artistic works shall be printed and published or reprinted and republished in Canada, and in the case of works of art they shall be produced or reproduced in Canada whether so published or produced for the first time, contemporaneously or subsequent to the publication elsewhere."

Q. Do you mean to say that the adhesion to the Berne Convention, in the face of that, between 1886 and 1923, provided that a book printed in England

[Mr. E. Blake Robertson.]

was not protected in Canada?—A. Mr. Chevrier, you do not need to talk about 1886. Take 1867, because 1875 is the first year of the domestic legislation for copyright in Canada.

Q. 1886 is the other date?—A. No.

Q. The Convention at Berne was in 1886?—A. Yes.

Q. England adhered to that?—A. That did not change the situation one iota.

Q. England stuck us into the Convention, as a good, loving mother should?—A. Are you sure she was within her rights in doing that? Everybody says she was all wrong.

Q. She either had the right or did not, but she did put us in; she may have been wrong in putting us in there, but there are judgments in Montreal—and I can get them for you—which declare that we have been adhering to the Convention at Berne since 1886. Is it not a fact that a book printed in England after 1886 was protected in Canada, notwithstanding the fact that it was not printed in Canada, because England and Canada were unionized, and there was no discrimination against Canadian authors?—A. Now, Mr. Chevrier, I think you know that it was not the Berne Convention that provided this protection at all; it was the Imperial Copyright Act of 1842, and well you know it. That was in force prior to Confederation, and it automatically applied to Canada. It is quoted in conjunction with the Berne Convention in all these cases to which you refer, and which I have studied.

Q. You know the judgments rendered in Montreal—A. I know them.

The CHAIRMAN: In reference to the law which has been in force in Canada, perhaps Mr. O'Halloran would give us his opinion. He has been enforcing it for years.

Mr. O'HALLORAN: The British statutes were in force, and the copyright was acquired in Canada under the terms of these statutes and might also be acquired under our own Act of 1875.

The CHAIRMAN: Previous to 1886?

Mr. O'HALLORAN: Previous to 1886. Our Act came into force in 1875. In order to get a copyright under that, no printing in Canada was necessary. The British Act was in force at the same time, and copyright might be acquired under that, and if it was acquired under that, printing in Canada was not an essential.

Mr. CHEVRIER: You do not deny, Mr. O'Halloran, that the Act—

Mr. O'HALLORAN: Why put the question to me in that form, Mr. Chevrier? I am most anxious to give the Committee all the information which I can. Why do you ask me if I am going to deny anything?

Mr. CHEVRIER: I am not saying that. You do not deny, that, as a result of the Act of 1886, and our adhesion to the Convention, we are protected in Canada?

Mr. O'HALLORAN: After Great Britain, at the request of Canada, declared our adherence to the Berne Convention, then it was possible to obtain the copyright in Canada.

Mr. CHEVRIER: If a book was printed in England by a Canadian, then he was under that? He might have been protected under the British statute or might have been protected under the Berne Convention; but at all events he was protected in Canada, even though he did not print here?

Mr. HOCKEN: The Act passed by the Canadian Parliament was nullified by a previous Act passed by the British Parliament?

Mr. CHEVRIER: It did not throw out the whole Act?

The WITNESS: It was not so important what Mr. O'Halloran's opinion is, what was important was the commercial view of the situation, and the com-

mercerial people said, "We have to print in Canada, and if we are going to have to do that, we ought to do it to the extent of 1,500 works a year."

Mr. CHEVRIER: As a last word; my contention is—and it is open for discussion, and you can take it or leave it—that because section 6 was in the Act of 1875, that did not affect one iota the printing in Canada. They printed in Canada because they felt like it, because they were protected by another Act, and, therefore, there was no compulsory printing in Canada then. The printers never made a case stating that it should be printed in Canada; from 1886 to 1923 nobody used any compulsion, and yet they were protected. That is the difference between the two, the compulsory Act and the present Act.

The WITNESS: The Berne Convention of 1886 did not help the United States situation as it was the United States situation we were interested in, and which we are interested in. The United States not being adherents of either that Convention or the present Convention materially alters the situation. The present licensing clauses are a mild form of the previous manufacturing clause which was so ably supported by Sir John Thompson in his time and by Hon. Sidney Fisher in his time. If section 5 of Bill 2 carries, the last vestige of encouragement under copyright law for the printing industry vanishes.

Mr. de Montigny, no doubt unintentionally, conveyed an entirely erroneous impression when before this committee he said:

"... the license clauses of our Copyright Act now prevent me from importing my own edition, if it is made outside of Canada. As I have said the main object of this licensing system is to create a monopoly for the Canadian printer..."

Just before making this statement Mr. de Montigny had pointed out that he has published only one book which sold at \$1.00 per copy to cover expenses and that the printing had cost \$900. The Committee will at once note that a book for which there was such a limited demand would have no attraction for even the staunchest advocate of the licensing clauses. His statement that the book could have been printed in Europe for one-quarter the amount paid in Canada should be considered in the light of Mr. Kelley's evidence, in which on page 64 he is reported as stating:—

"I have been informed by Mr. Appleton that it was more profitable to them to produce a book here if it was a book that would sell in sufficient quantities".

In other words where the edition is reasonably large it is cheaper to print in Canada than to import but if the edition is very small it is cheaper to have the work done in Europe at wages and under working conditions which would not be tolerated in Canada.

The important point is, Mr. de Montigny could have had his printing and publishing done in either England or France. This would have granted him his Canadian copyright. He could then have imported the work without in any way jeopardizing his copyright.

Mr. CHEVRIER: Not a bit.

The WITNESS: Why not? I am prepared to argue that.

By Mr. Chevrier:

Q. Are you prepared to license him?—A. License a book that cost \$900?

Q. The principle is the same.—A. The printers are not going into this for principle, they are going into it to make money.

Q. Oh, that lets the cat out of the bag. That is the point exactly. You are not going to discuss this Bill for any other motive or reason or anything

else but money? Principle? You put that to one side? It is money you are after?—A. That is what we are in business for.

Mr. LADNER: From a practical point of view, under what condition would a publisher undertake to reprint a book, unless it was to make a profit?

Mr. CHEVRIER: So you are going to get after me any time I am liable to make a little money?

Mr. LADNER: You may not have a good business head, while the publisher, having knowledge of the business, and enterprise and business skill could do it, and make a success of it.

Mr. CHEVRIER: I fear the Greeks, particularly when they come to me with gifts.

Mr. IRVINE: You are afraid this licensing clause will take away some money from the authors?

Mr. CHEVRIER: No. I am not putting it on that score at all, but I say to you that you use that licensing clause only when you are making money. When you are not going to make money, you do not care for me, but when you are going to make money you get after me. I thought your ideals higher than that.

Mr. IRVINE: Are you not aware that is the only kind of legislation ever made in this country?

The CHAIRMAN: I think we ought to proceed with the evidence.

By Mr. Ladner:

Q. Mr. Robertson, I was impressed with the statement of Mr. de Montigny the other day, regarding the cost of printing, and the point I had in my mind, and which the public would have in its mind, in fairness to the author, was this: if a man produces a work and the printing in Canada will cost him \$900, but would only cost him \$300 in France, and if he makes the selection to have it printed in France for \$300, paying the duty to bring it into Canada, would that not be fair and just to the authors?—A. You are a student of economics, and do you think it likely that any industry will continue to exist in Canada, protected, by and large, by a 10 per cent duty, that is charging three or four times as much for these goods as is charged in a foreign country?

Q. If the duty is not high enough, make it higher. The principle I am concerned with is the distinction between prohibition and protection?—A. Mr. Kelley, who appeared for the authors, admitted that where the edition was a good sized one, it was cheaper to do it in Canada. This was entirely opposite to the statement made by Mr. de Montigny. I will admit, if it is a very, very small work, where you are only printing a few copies, if you can get a printer in some other country to work for five or ten dollars a week, while you have to pay \$48 per week here, it would make a difference. The large portion of the work consists in setting up the type and the putting together of the forms, stitching and so forth. I think in smaller editions they can perhaps do that to advantage, but when you come into the large editions, it is more economical to do it here. The particular objection I take to Mr. de Montigny's statement is that it sent out to the country at large the impression that printing costs four times as much in Canada as it does elsewhere.

By Mr. Chevrier:

Q. What do you say to this? That licensing clauses shall only apply to books, the circulation of which is over 15,000?—A. How will you know what the circulation of a book is to be?

Mr. HOCKEN: You are proposing—

Mr. CHEVRIER: Ah, the shoe is beginning to pinch.

[Mr. E. Blake Robertson.]

Mr. HOCKEN: It is not pinching at all. This last proposition is a most absurd one. How can you tell what a circulation will be?

Mr. CHEVRIER: I am not concerned with that.

Mr. HOCKEN: A book might be printed and then another edition called for.

Mr. CHEVRIER: Supposing, Mr. Robertson, you answer that question subject to a book reaching 10,000? Supposing it has reached 10,000. Would you answer that question whether you would have these licensing clauses apply to books the circulations of which are over 10,000?

Mr. IRVINE: We have evidence here to show that the average sale of books printed in Canada is only about 2,000.

The CHAIRMAN: 2,000 for each edition.

Mr. IRVINE: Now, you want a 15,000 demand? Where will you sell them?

Mr. CHEVRIER: I am not concerned with that. That shows the inconsistencies of your argument.

Mr. IRVINE: I am not making an argument; I am dealing with yours. You say the licensing clauses should apply only on books that are good sellers, and if not, the licensing clauses should not apply.

Mr. CHEVRIER: In the case of Mr. de Montigny, you would not go after him because his work was not a big seller?

Mr. HOCKEN: In the case of Mr. de Montigny nobody published it but himself.

Mr. CHEVRIER: There again is the right of the author to dispose of his works as he deems best. Mr. de Montigny printed that book where he wanted to; he knew it would not have a circulation of 15 million. That is the reason why these licensing clauses should be removed.

By Mr. Ladner:

Q. Mr. Robertson, supposing an issue was 10,000 books: Have you any reliable estimate of the comparison in cost between cost of printing in this country and in Great Britain?—A. On a 10,000 edition it would pay to print here, but it would not be printed under license.

Q. Have they not as modern machinery here? I understood that Great Britain had the most modern printing machinery—A. Of the poorest and the best, but not of the medium.

By Mr. Rinfret:

Q. You mean in Canada?—A. No, I am speaking about England. My understanding is that England is very advanced in the real cheap type of printing, and the really high grade, but not in the medium.

Q. What difference would there be in Canada and Great Britain in product?—A. I would not undertake to say. Our main trouble is not with Great Britain; our main trouble is with the United States.

Q. Is it cheaper in the United States?—A. They have a population of 120 million and their runs, consequently, are so large that they can supply us with their overflow.

By Mr. Ladner:

Q. On a 10,000 edition, how much cheaper would the United States be?—A. If our 10,000 was a part of their 60,000 their cost would be lower, but would be taken care of by the duty which would apply.

Q. Supposing our 10,000 was not part of their 60,000?—A. It always is; that is the trouble.

[Mr. E. Blake Robertson.]

Q. Take a single instance of the printing of 10,000 books of a certain quality—a low grade quality: how would that compare with Canada?—A. In the United States or England?

Q. In the United States?—A. That case would never arise; they never go to the United States to print a book for circulation in Canada only.

Q. Why not, if they can get it done cheaper?—A. They would not unless the Canadian edition was a portion of the United States edition.

Q. Do not get away from my hypothesis. I have given you a certain set of facts. I cited 10,000 books. What is the difference between the cost of printing in the United States and Canada?—A. I know there is difference but you are putting a hypothetical case, Mr. Ladner, and asking me to give you a business answer to a business situation which does not exist.

Q. I am asking you the question, and if you know, let us know—A. On a 10,000 edition, I would say that our prices are sufficiently close to the United States prices, with the 10 per cent duty which prevails, to enable us to get the order in competition with the United States houses. I say that without being actually engaged in the business, but with a knowledge of orders of different classes going through, and knowing the competition we have to meet.

Q. Now, there are three—the low, the medium, and the high—A. I was applying that to England. It was to England that that reference was made.

Q. Are there not those three classes in the United States now?—A. No; I would say, roughly, in a general way, our printing is about on a par with the United States.

By Mr. Lewis:

Q. In cost?—A. On large runs, yes, but we do not get the large runs very often.

The CHAIRMAN: If you will proceed, Mr. Robertson, with your statement.

The WITNESS: Certain evidence given before this committee has a tendency to mislead anyone who has time to give same only a superficial reading. Mr. Burpee said:—

“Even the United States has too much national self-respect to insult its men-of-letters by shackling them with such a provision as that embodied in the Amending Act of 1923.” (The reference being to the licensing sections.) Evidence p. 3.

Mr. Kelley, questioned by Mr. Rinfret, gave answers which undoubtedly were very misleading:

“Mr. Rinfret: Supposing we maintain this clause in our Act, would a similar clause apply in the United States against our own authors?”—

A. “They have not this clause in their Act now.” (p. 61.)

“Mr. Rinfret: But it is not to be feared that the United States would adopt similar legislation which would apply the same restrictions in the United States?”—A. “If our authors became sufficiently known, it might be.”

“Mr. Rinfret: If they go to the United States they would be under the threat of not being printed in Canada, and if they stayed in this country similar treatment might apply in the United States, and we would have started it all by these clauses?”—A. “These clauses are a novelty in copyright legislation anyway.” (p. 62.)

These statements sound peculiar in describing the copyright situation in the United States where a book in the English language loses all copyright protection if offered for sale that is published in any edition which is not printed in the United States from type set in the United States.

Mr. CHEVRIER: Before we proceed, Mr. Chairman, I wish to take objection to the procedure. Mr. Robertson is now criticizing every one of those who

[Mr. E. Blake Robertson.]

have given evidence; he has taken it into his hands to act as judge in this matter. Without any reflection on him at all, I bring this to your attention. I think we only want to listen to his evidence and not to his criticism of the other evidence which was given before this Committee. I think we are entirely out of order.

Mr. HOCKEN: Let us get all the information we can.

Mr. CHEVRIER: I object to this proceeding. I want all that can be legitimately given.

Mr. LADNER: So far as I am concerned, I would prefer to have the comments of the witness on these nice points of differences of opinion as expressed by the other witnesses. In that way will we really get a solution much better than by having these statements detached from each other. I think the evidence of this witness is most pertinent, and to me would be most useful; to talk about something that the other witnesses did not refer to, and to comment upon it, would not be as useful as to get a connected discussion on this evidence.

Mr. CHEVRIER: That is all right, provided Mr. Robertson makes the statement, and then we will have the opportunity to discuss it, but if Mr. Robertson is going to discuss with one or two members of the Committee the evidence of other witnesses, I do not think that is right. Somebody said, "Let the witness proceed, and then I may cross-examine him." I object to that.

The CHAIRMAN: I think in the course of Mr. Robertson's evidence, if he finds that something has been referred to by the previous witness, it seems to me it would not be out of order to have him refer to that point in the evidence.

Mr. IRVINE: Could he not refer to the point without making any mention of the previous witnesses, and give his viewpoint on that?

Mr. CHEVRIER: He is now passing judgment on this as though he were an expert. He may be, but I am not prepared to admit it now.

Mr. LADNER: We should hear his statement now, and then have an opportunity to question him.

Mr. CHEVRIER: I cannot take these things down verbatim; I have no reporter at hand to take these things down; I object to this manner of proceeding, that he be allowed to criticize every other witness who has come up. I do not think it is fair. I cannot get back at the statements.

Mr. RINFRET: Mr. Robertson might refer to the different points of the Bill without mentioning the witnesses.

The WITNESS: May I mention the evidence of the witnesses?

The CHAIRMAN: Would this be satisfactory, Mr. Chevrier, if, in the evidence previously given to the Committee, Mr. Robertson sees a point about which he wishes to make a comparison, to have him make a reference to a certain page of the evidence?

Mr. CHEVRIER: How can I get back at him?

The WITNESS: I will stop any place, Mr. Chevrier, and answer any question I can, which you may care to ask.

The CHAIRMAN: If we get the straight statement, we will get through quicker. We have many other witnesses to hear yet, and we will not be able to hear all of them as we had hoped to do.

[Mr. E. Blake Robertson.]

The WITNESS: Is it satisfactory to you, Mr. Chevrier, if I refer to a statement without referring to the person who made it? I cannot very well give evidence and dissociate myself entirely from what was said before, especially if, in my opinion, I think it was wrong.

Mr. CHEVRIER: Why not wait until somebody asks you?

The WITNESS: I am here to put my side of the case.

Mr. CHEVRIER: But let the other fellow's case alone.

The WITNESS: That is a difficult thing to do.

Mr. CHEVRIER: You are the only one who has come here and criticized the other evidence.

The WITNESS: Each one criticizes the other.

Mr. LADNER: Why not let the witness give it in his own way?

The CHAIRMAN: I think if we let the witness proceed to give his evidence, but not to criticize or pass judgment on what was said, we will get along faster, but we cannot deny him the right to comment upon other evidence which was given if it comes up in the course of his own.

Mr. CHEVRIER: Then I will have to reserve the right, if I find a statement I can contradict, at another meeting of this Committee, to bring a witness to straighten it out.

Mr. HOCKEN: Sure; go ahead.

The WITNESS: It will be pretty hard for me to proceed along these lines. I was coming to a case where I was actually attacking a statement made. I had just reached that portion. However, I will discard my brief, if that will help any.

Mr. LADNER: I think that Mr. Chevrier will agree with this; those of us who are experienced in court know that the swiftest way is to let the witness give his evidence in his own way, and then cross-examine him. If some important point is raised, counsel makes a note of it, and then goes after the witness on that point, with a full grasp of the case. Might it not be better here to follow that procedure? Mr. Chevrier, particularly, would easily handle an essential point in cross-examination.

The CHAIRMAN: Perhaps that would be the shorter way. Is that the wish of the Committee? (Carried).

The WITNESS: Mr. Kelley appeared before you speaking for the majority of the publishers' section of Toronto Board of Trade. A close examination of his remarks and of the evidence of Mr. Appleton forces the conclusion that this section of Toronto Board of Trade composed of twelve members, consists of three firms manufacturing in Canada and nine importers, classed as publishers, which word was defined by Mr. Lewis as a dignified name for a book agent. The views of the firms manufacturing in Canada were placed before you by Mr. Appleton in person, since amended to relate only to works with a sufficiently large circulation to justify Canadian printing. The Ryerson Press expressed in a telegram their opinions. The views of the importers, as on March 7th, were presented to you by Mr. Kelley and appear on page 56 of the evidence, where we read:—

“The publishers' section has always been opposed to the principle of these compulsory licensing provisions. It therefore approves of clause 5 (of Bill 2) repealing them.”

[Mr. E. Blake Robertson.]

But further down on the same page we find Mr. Kelley saying:—

“After hearing what was said yesterday, I am quite certain that the publishers’ section would not object to some arrangement being made such as is desired by the magazine publishers; that is, for serial copy-right.”

Like Saul of Tarsus on his way to Damascus, a new vision had been granted him. Now, which of these conflicting views is the Committee to accept? The resolution of March 7 that section 5 of Bill 2 should carry or Mr. Kelley’s assurance of March 13 that his clients wish section 5 defeated? Parliament cannot enact section 5 if it gives any weight to Mr. Kelley’s conversion. When converted, in part, the paid solicitor of our opponents, we feel that our case is safe in the hands of Parliament. There is only one explanation for Mr. Kelley’s change in front. The resolution of March 7th represented ill-considered half-baked ideas and possibly a further week’s consideration would bring those who passed the resolution into a frame of mind where they would take up the cudgels for an Act framed from a national standpoint.

On page 58, Mr. Kelley states that American authors under our law have copyright in their unpublished works. This statement is entirely inaccurate except in the case of American authors resident within His Majesty’s Dominions. Works in which copyright may subsist are enumerated in section 4 of the Act. The first eight lines of the section deal with unpublished works and read:—

“Subject to the provision of this Act, copyright shall subsist in Canada for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work, if the author was at the date of the making of the work a British subject, a citizen or subject of a foreign country which has adhered to the Convention and the additional protocol thereto set out in the second schedule to this Act, or resident within His Majesty’s Dominions;”

This inaccuracy is mentioned because only laymen have spoken in favour of the licensing clauses and the Committee might naturally be inclined to attach undue weight to the representations of one of the legal fraternity.

Mr. Kelley makes another statement on page 48.

“We cannot have copyrights with Great Britain and other Dominions and with the countries of the Union unless we drop the manufacturing clauses.”

He speaks of dropping something; we can drop only something we have; he speaks of “manufacturing clauses.” If his remarks refer to anything they must refer to the licensing clauses; if they mean anything they must mean that we have no copyright in Great Britain. Nevertheless at Downing street on December 6th, 1923, the Duke of Devonshire issued a certificate which read:

“I, the undersigned, one of His Majesty’s principal secretaries of State, do hereby certify, pursuant to section 25 subsection (2) of the Imperial Copyright Act, 1911, that the Dominion of Canada has passed legislation (that is to say the Copyright Act, 1921, and the Copyright Amendment Act, 1923) under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the Dominion of Canada, or (not being British subjects) were resident in the parts of His Majesty’s Dominions to which the said Imperial Act extends, enjoy within the Dominion of Canada, as from the 1st day of January, 1924, rights substantially indetical with those conferred by the said Imperial Act.”

[Mr. E. Blake Robertson.]

If Mr. Kelley's quoted words mean anything they mean that we are not adherents to the Revised Berne Convention.

By Mr. Chevrier:

Q. We all agree that we belong to the Berne Convention?—A. Mr. Kelley's evidence is liable to lead anyone who has not given it very considerable attention to think otherwise. He says we cannot have union with the other countries unless we drop these clauses.

Mr. CHEVRIER: I might read now a letter from Mr. Kelley which would make things plain. I did not want to read it, because it is the first time I have ever heard of such a thing, but perhaps this is the time to bring it up.

"Mr. de Montigny sent me a copy of my evidence, and I am sorry to find that the reporter has not taken down my answers correctly in a number of instances—"

which, he says, renders his evidence valueless on that point.

The WITNESS: I heard him give his evidence, and I jotted it down at the time, so I am not going by the printed record. The statements he made appeared to me as statements that were certain to confuse anyone hearing them.

By Mr. Chevrier:

Q. You know that that is absolutely inconsistent, if you say, "drop the manufacturing clauses". What is the use of harping on that?—A. This goes to the 235 members of Parliament, and their vote is going to be influenced by what he said, and we are vitally interested in it. I think I should have the privilege, if not the right, of setting the thing clear. It is a very tricky subject, and not one man out of a dozen has given any attention to it.

Mr. IRVINE: Go ahead and give us the point.

The WITNESS: All I said was that the statement could becloud the issue. On page 62, Mr. Kelley states that in comparison with royalties paid in the United States, royalties which would be allowed by the Minister under the licensing sections "would be greatly reduced." Mr. Burpee, on page 4, says that an author whose works were licensed, would be lucky to get in Canada one-half the royalties he would otherwise have received on the books sold in Canada. I submit that prophesies of this character constitute an uncalled for reflection upon the present and future Ministers under whose jurisdiction this Act is, or in the future may be.

Mr. CHEVRIER: Let them defend themselves.

The WITNESS: They are extravagant statements without one iota of foundation. The effect of the statements is to create an unfair prejudice against licenses, and I know of no other reason why they were made. There have been no licenses granted, and consequently nobody is in a position to say that a Minister of the Crown is going to say, "Here, for the sake of the printer I am going to cut your royalty in two." It is absolutely unthinkable. I have confidence enough in the Ministers of the past, present and future that the rights of the author will be absolutely safeguarded.

By Mr. Chevrier:

Q. Much better than the authors themselves could possibly do?—A. Possibly so.

Q. Authors are people who are unable to look after themselves; they are *non compos mentis*?—A. Judging by section 11, subsection (2)—Yes. The tendency of representations by authors was to convey the impression that Can-

[Mr. E. Blake Robertson.]

ada, unlike other nations, was attempting to sidestep the provisions of the Berne Convention. Let us see what other countries have done.

Spain is an adherent to the Berne Convention. Except in cases where the author desires to suppress, if a work has not been republished within a specified period, the Government may give the copyright holder notification to republish, and, if he refuses, or neglects to do so, any printer in Spain may without license print such number of unaltered copies of the work as he desires.

Holland is an adherent to the revised Berne Convention, but there it is not an infringement to reproduce a limited number of copies of a copyrighted literary work for personal use.

Germany is an adherent, nevertheless her laws regarding artistic works provide that persons who are not subjects or citizens shall enjoy protection only for such works as are there published, and as have not previously been published elsewhere.

Japan is an adherent, but copyright protection on perforated rolls and cinematograph films does not apply in the case of works of which the country of origin is Denmark, Italy or Sweden. Great Britain likewise reserves to her citizens the right to publish translations of newspaper articles appearing in Belgium, France or Germany except where the foreign papers specially prohibit same by notice in a conspicuous part of the papers.

While referred to as an international convention, the Berne Convention might more properly be described as an European convention in that it fails to provide for our peculiar geographical and commercial situation. When mechanical instruments for the reproduction of music were controlled by European interests, the Berne Convention contained a provision reading:

“Section 3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, shall not be considered as constituting an infringement of musical copyright.”

At the first revision after this industry by improvements had become centered in America, the Convention was at once changed to its present form. The final protocol to the Berne Convention, done at Berne the ninth day of September, 1886, provides, as I have already stated.

Before this committee, the opinion was volunteered that the words “Canadian citizen” used in the amending Act of 1923 did not cover a person born say, in England, and now making his permanent home in Canada. Possibly when—

Mr. CHEVRIER: Again that is the same thing. Why should Mr. Robertson lay down the law here?

The WITNESS: I have the opinion of other lawyers; they cite several unnamed authorities, and I have here the originals of the conflicting views.

Mr. CHEVRIER: I take this objection, that I am not going to listen to Mr. Robertson reading any lawyers’ letters or anything of the kind to interpret this Act.

The WITNESS: I have five interpretations of what constitutes a Canadian citizen.

Mr. CHEVRIER: I refuse to listen to them.

By Mr. Irvine:

Q. What is the point?—A. As to whether you are a Canadian citizen within the meaning of the Canadian Copyright Law, you having been born outside Canada.

[Mr. E. Blake Robertson.]

Q. I understand it was expressed by some gentleman giving evidence here that a Canadian citizen, although he may be enjoying Canadian citizenship here, if he happened to be born in Great Britain did not come under this Act.

The CHAIRMAN: Professor Leacock.

By Mr. Irvine:

Q. What is your opinion on that, Mr. Robertson?—A. I have five opinions on that. Not belonging to the legal fraternity myself I would be hesitant to express my opinion, although I would say, if it is of any interest to you, that it is entirely contrary to that of Professor Leacock. Possibly when Professor Leacock was voicing his opinion he was speaking in his capacity as a humorist rather than in his capacity as one of the leading members of the faculty of a great university, but I have five opinions on the matter.

Mr. CHEVRIER: I submit that if the Committee wants to find out anything about the interpretation of this statute, or of the law, or of the Bill, there is the Parliamentary Counsel and the Department of Justice, and I for one am not going to listen to anyone coming in here to give a legal interpretation of the Act.

Mr. IRVINE: I think Mr. Chevrier is perhaps right, but at the same time other witnesses have made the statement that they do not come under this law, and here is another witness, and I would like to get his opinion on that.

Mr. CHEVRIER: Mr. Chairman, how can Mr. Robertson say that? He does not know the facts of the case; he does not know Mr. Leacock's intentions; it is a question of domicile and he does not know anything about that at all. It is a question for a judge to appreciate, whether one has lost his domicile or not, and Mr. Irvine says now this witness might give his opinion. How can he give that opinion, how can any counsel give that opinion without having interviewed these gentlemen and found out what their intentions were and so on. He cannot give that opinion.

Mr. HOCKEN: Professor Leacock gave his opinion.

Mr. IRVINE: I was thinking of an amendment, and I was wondering if it would be necessary. I was going to move an amendment as follows:—

“(u) ‘Canadian citizen’ includes any person born in Canada who has not become naturalized in some foreign country, any foreign born person who has become naturalized in Canada, and any British subject by birth or naturalization who has Canadian domicile.”

Do you think that would cover the situation?

The WITNESS: I think that would cover all people generally described as Canadian citizens. In that, you take in Canadians who have not been naturalized elsewhere; foreign born naturalized here, and British born domiciled in Canada.

Mr. LADNER: I would suggest that the witness give his opinion, which he may have come to by following a lawyer's opinion or by following the middle course between several opinions, but I think Mr. Chevrier is right that the witness should give his conclusions on the point, rather than the reproduction of a great number of lawyers' letters.

The WITNESS: I have five opinions; if you wish it, to save time I will file them.

By Mr. Ladner:

Q. You have an opinion which you have come to as the result of reading these letters. I think the Committee would be interested in that.

[Mr. E. Blake Robertson.]

The CHAIRMAN: If you just give us your own opinion——

Mr. CHEVRIER: Just a moment, please. I have respect for the opinion that has just been given by Mr. Ladner, but you want Mr. Robertson to give his conclusion, to say whether Mr. Stephen Leacock falls within the section or not. You want him to come to that conclusion after having read five lawyers' letters. If the five opinions are all one, the way is clear, but if they are different, how can he form an opinion as between the value of five lawyers' letters, two on one side and three on the other? You are giving him a cross-word puzzle, and whatever he says, I will not be bound by it, and I will not believe it.

Mr. LADNER: I wanted to avoid reproducing five lawyers' letters, because they are no good unless you give their names, and I think really it might be evidence on a matter of this kind. Mr. Robertson is a man who, we must admit, has a pretty full grasp of this subject; he is an intelligent man and his statement of his idea is what I think we are entitled to receive and what we should receive.

The CHAIRMAN: I think Mr. Ladner's view is right, that we are here to hear Mr. Robertson's own statement, and I think we should hear that.

Mr. CHEVRIER: Let us hear that, then.

The WITNESS: I will lay the lawyers' letters aside. I asked five legal men of some prominence, in whose opinions I place some confidence, to give me an answer as to whether a person born in England, with a permanent residence in Canada would, under this Act, be classed as a Canadian citizen. The answer in each of the five cases was Yes. I put the case to them this way; as a matter of fact I said, "Here is the Canadian Copyright Act amendment of 1923——

By Mr. Ladner:

Q. Did you say a Canadian born in England?—A. Yes, with a permanent home in Canada; would they be classed as Canadian citizens under this Act, and the answer in each case was Yes, with varying reasons, some of which appealed to my reason, and some of which did not. I can just say this——

By Mr. Chevrier:

Q. Will you say, then, that Mr. Leacock is under a misapprehension and so is Mr. Gibbon, and that what they said here is wrong? In your opinion they are wrong?—A. If either one of them published a book which I wished to license I would have no hesitation in asking for a license and I think I would obtain it. I am through.

The CHAIRMAN: Are there any other questions, gentlemen? We have some other witnesses who have come from a distance.

The witness retired.

J. N. CARTIER called and sworn.

By the Chairman:

Q. May I ask what you represent in this case, Mr. Cartier?—A. I am representing the interests of broadcasting owned and operated by newspapers in Canada. I am from Montreal, representing *La Presse*, and the Canadian broadcasting stations in general.

By Mr. Chevrier:

Q. What do you mean by that? (No answer.)

[Mr. J. N. Cartier.]

By Mr. McKay:

Q. Has *La Presse* a broadcasting station?—A. Yes, sir.

By the Chairman:

Q. I take it that you represent the broadcasting stations of the various newspapers?—A. Yes, sir.

By Mr. Chevrier:

Q. Have you any authority to show?—A. I have a couple of telegrams from newspapers. One is from the *Calgary Herald* and one is from the *Edmonton Journal*.

Q. Are those the only two?—A. That is all.

Q. And *La Presse*?—A. Yes.

Q. Those are the only three you represent?—A. Yes.

Q. A slight difference from what you started to say?—A. I know the others are sharing our views.

By Mr. Ladner:

Q. Have you consulted with any other papers beside those?—A. Yes, I have.

Q. And the statements you make are pursuant to the viewpoint which they have?—A. Yes, sir.

By Mr. Irvine:

Q. So far as you are aware, they have no interest in this matter other than from your own point of view?—A. We all share the same views.

By Mr. Chevrier:

Q. Outside of those two newspapers which sent you telegrams, which ones did you communicate with?—A. *Le Soleil*.

Q. What other?—A. I have no data here unfortunately, and I would not like to mention any others, being under oath. That is all I can remember just now.

Q. Those are the four in whose favour you are speaking now?—A. Yes, sir.

Q. Slightly different from "in general." Go ahead.—A. On behalf of *La Presse Publishing Co., Ltd.*, of Montreal, owners and operators of station CKAC—and on behalf of other newspapers, owners and operators of similar radio stations, I appear before this committee—

Q. That is, those you just mentioned?—A. Yes, sir. —for the purpose of asking the complete repeal of paragraph (g) under the marginal heading of "performance" of section 4 of bill No. 2 (An Act to amend and make operative certain provisions of the Copyright Act, 1921). This, in order to protect composers, authors and publishers and the radio industry in general.

Q. Are you prepared to show how you help the authors?—A. Yes, sir. After managing the bilingual operations of *La Presse* station CKAC, for nearly three years, I am in a position to give you the following data, based on a most careful study of the results achieved and obtained by our station in particular, and from observation and information gathered from sister radio-broadcasting stations throughout the Dominion and the United States. No radio broadcasting station in this country, whether commercial or amateur, derives what may be called an income or a revenue from its operation. Some owners claim that the publicity derived from its station is profitable, while others, as in the case of newspapers, fail to trace it direct to its use.

In order to develop the radio industry and radio science in general, broadcasting stations must exist—and a good service must be given the audience, whether the listener-in be a labourer, farmer or intellectual. In the case of *La Presse* and other newspapers in this Dominion, broadcasting stations were

[Mr. J. N. Cartier.]

erected by publishers, for the mere purpose of entertainment, freely, and of promoting good-will among Canadians regardless of race or religion; since, at the time, the few owners of radio receivers depended largely on American stations for such service. Other stations owned and operated by manufacturing companies, in Canada, were also built in order to further develop science. These Canadian stations immediately counteracted American propaganda, and caused a tremendous expansion of this industry within the Dominion.

In the case of La Presse station, within the past two years, an average of two hundred and fifty letters are received daily, from all parts of the North American continent, and many from foreign lands, including Europe. The New England States, where nearly two millions of French-Canadians have taken refuge, have been among those which have swelled the "radio daily mail bag" with great regularity. The majority of these letters bear messages of homesickness brought upon the writers by the radio entertainment in their own language, and not a few express their intention of returning to their native land. This contact with Canadians who have left Canadian soil is incalculable, from the repatriation point of view.

Q. How many have come back as a result of that?—A. It is hard to say.

By Mr. Ladner:

Q. Would there be 25,000 who came back?—A. I guess so.

By Mr. Chevrier:

Q. All because they heard you sing over the radio?—A. Not me; they heard me talk.

Q. Do you mean to say that the 25,000 French-Canadians who came back from the Eastern States last year came back because of the radio?—A. I would not say all of them.

Q. How many?—A. It is hard to figure.

Q. Do you not think you would be better advised if you did not make that statement?—A. No, sir. As a matter of fact there are certain departments considering giving special talks to influence French-Canadians in New England to come back, to tell them something of this country which they may have forgotten.

Q. And that is the only interest you have in the broadcasting?—A. That is one of the many.

By Mr. Irvine:

Q. Would you say in view of the fact that the present Government policy is chasing people out of the country, we ought to have some counter-irritant?

The CHAIRMAN: I think we should let the witness proceed, gentlemen, and we may be able to get through the next witness before we adjourn.

The WITNESS: Among letters received from the rural districts, we find many from social leaders, parish priests, political chiefs, club members, association presidents, etc., emphasizing upon the fact that radio is the best agenda of the day, which has been, and is, more and more, influencing the farmer, the settler or workingman to enjoy home life and to be entirely satisfied with whatever his Canadian radio station brings to him in way of education or entertainment. The greatest factor with a direct tendency of keeping the farmers on the farm.

Radio has educated Canadians to the better kind of music, though it may take some time yet, to erase jazz from programmes. It has compelled newspapers to be more truthful in their reports of events that are broadcast. For instance, if a political meeting is taking place, and it is broadcast, the opposition papers next day cannot say it was not successful, and so on.

[Mr. J. N. Cartier.]

By Mr. Chevrier:

Q. Previous to that, the newspapers were propagators of lies?—A. In some cases, undoubtedly. Radio has placed the rural population at par with that of the larger cities—inasmuch that it brings the city to the country—and in the case of *La Presse* since the inaugural of its provincial band contest—the country to the city. Radio is always at the disposal of members of the municipal, provincial and federal governments, providing that those availing themselves of the privilege, do it for the good and welfare of the country, and things Canadian of interest to Canadians within the station's radius.

It might interest this committee to know that there are to-day approximately 400,000 radio receiving sets installed in Canadian homes. Of this number, it is estimated that 300,000 are of the crystal type or single tube kind, capable of a reach varying from ten to one hundred miles in all seasons of the year.

By Mr. Ladner:

Q. What was that distance?—A. Ten to one hundred miles. That is a good range all the year round. These cheaper types of receivers are owned by the working class and the farmers and others who cannot afford a "de luxe" apparatus, and a good sized family, and all are satisfied with the local radio reception.

In the province of Quebec, there are about 100,000 receiving sets, distributed as follows: sixty thousand in the Montreal district and the balance throughout the province. For the past year, through the restless activities of Canadian broadcasting stations, radio demands combined with perfection and development of apparatus have caused prices to fall, in some instances, as much as fifty per cent, with the result that the poorer classes are to-day able to avail themselves of this new free enjoyment in the home.

In 1924 the radio industry in Canada reached the thirty million dollar mark. In 1925 the same market will exceed the fifty million dollar margin.

The operation of a station like CKAC of *La Presse* costs some forty thousands of dollars yearly, divided into salaries to a large personnel of trained and skilled men, the upkeep of a modern apparatus and studio, the renewing of furniture and parts, the printing of programmes distributed to hundreds of other newspapers (showing here that the newspapers, owners of radio stations, are not keeping their programmes to themselves, as the case would be expected, but, in the interest of readers of all papers, are distributing them to any other publications whether friendly or otherwise) caring of artists, remote control lines, and many other items, besides the interest on the initially invested capital. In distributing our programmes to other newspapers, we are not hogging it all, to attempt to compel people to buy our newspapers to get our programmes.

By Mr. McKay:

Q. What do you mean?—A. I mean that the owner of a station might keep his programmes to himself in order to compel people to buy the paper.

The returns for a station of the kind is truly untraceable, as far as a newspaper is concerned. In the case of *La Presse*, and other newspapers, such radio service is referred to as good will for both advertisers and readers, and is above everything "pro bono publico" with the object of propagating Canada, Canadians and things Canadian.

Now, coming to the Copyright Amendment Act, 1925. If paragraph (g) of this Bill No. 2 which reads: "'performance' means any acoustic execution of a work or any visual representation of any dramatic action in a work, including such execution or representation made by means of any mechanical instrument and any communication or 'broadcasting' of such work by wireless

[Mr. J. N. Cartier.]

telephony, telegraphy, radio or other kindred process" is passed and becomes law, the outcome will be disastrous to all concerned.

By Mr. Ladner:

Q. Supposing you had this addition to the amendment (reads):—

" Provided that communication, diffusion, reproduction, execution, representation or radio broadcasting by any such wireless radio or other kindred process when made for no gain or interest, direct or indirect, shall not constitute a performance under this paragraph."

In other words, when there is no profit?—A. I suppose it could be put that way.

Q. Would you consider that your broadcasting station would come under that provision? Would you consider that you operate a broadcasting station for a gain or profit?—A. Personally, to the paper? Gain to the owner?

Q. Yes.—A. Yes, as I said, the public is gaining from the broadcasting station.

Q. Is the paper operating it for gain or profit?—A. No, it is not.

Q. Has it any gain or profit from it?—A. No, it is operating at a loss.

By Mr. Chevrier:

Q. Then what is your objection if you are making no profit, direct or indirect. If you are making no gain, direct or indirect, then you are not covered by this section which Mr. Ladner read. If your newspaper makes no gain, and no profit direct or indirect, and you, under oath, state that it does not, then that section should not bother you. You do not fall within the terms of that section?—A. I do not think so.

Q. Then what is your worry?—A. My worry is this, that if it becomes law, that paragraph, a publisher or an author may come to me and say "I want \$5,000 for singing, say, the "Banana" song, and another one comes and wants \$5,000 for something else.

MR. LADNER: The witness does not know about this amendment, so I think we should let him go ahead.

By Mr. Irvine:

Q. You stated that *La Presse* does not make a profit out of the operation of the radio, and I think a witness for the C.N.R. made a similar statement. Would the witness tell us whether he knows of any such distributing plant, or broadcasting station that is making a profit?—A. I do not know of one.

Q. Then this law is absolutely useless if none of them is making a profit.

MR. CHEVRIER: That is not fair reasoning. The law would hurt nobody and it would protect the principle for which you seem to be so anxious to stand up at any time.

WITNESS: What we are afraid of mostly is that the paragraph will go through, and that is why we are arguing.

MR. RINFRET: I do not think he was aware of the amendment.

WITNESS: Those words "direct or indirect" would be the cause of a whole lot of trouble.

MR. RINFRET: Personally, I think they would.

WITNESS: You know very well that it is impossible for a newspaper to trace a profit whether it is out of the editorial policy or from the radio.

The percentage of Canadian composers and publishers is so fractional that it is almost nonexistent, when compared to those of Europe and the United

States. We believe that a very small percentage of authors and publishers are favourable to paragraph (q) of this Bill No. 2. If the said paragraph becomes law these publishers, authors and composers will no doubt tax radio stations to exorbitant sums without the means of operators of said stations and compel these stations to close down. The result of closing down radio stations, which are now operating at a loss, will mean the destruction of the greatest industry of the age. Three hundred thousand Canadian citizens and their families, owners of the smaller type of radio sets, will lament this law, while the other 100,000 owning better type sets will have to resort to the smuggling in of American entertainment, which as you can surmise is generously smeared with "made in America" propaganda.

Several stations in Canada, as in our case, are the recipients of scores of letters every month, addressed by authors, composers and publishers, begging that their production be broadcast as the following letter received yesterday, shows.

"Dear CKAC:

Enclosed please find two radio sensations:

'Moonlight and Roses'

adapted from the celebrated 'ANDANTINO' by Lemare, and

'Shadows Across My Heart'

the biggest radio sensation the south has ever had.

Sing and play them and you will love them.

Kindly advise our home office when you are featuring these songs."

We get these by the hundreds every month, from authors, composers, and poem writers. Canadian authors, composers or publishers, in most cases, come personally to the stations and broadcast their own compositions when allowed to. Radio is not hurting the authors or composers, it is helping them. When a poem, a play or a musical composition is good, the radio audience immediately answers by requesting these at every opportunity. On the other hand, if the public do not favour the composition, the composer has the satisfaction of not lingering months or years before knowing that his attempt is a failure, and is therefore enabled to start on a new one with more knowledge of public criticism.

By Mr. Ladner:

Q. Have you any idea of the proportion of Canadian and foreign authors on the average programme?—A. Our station is really unique, because we are broadcasting a French and English programme. In our particular case, I would say that possibly it would amount to 10 per cent Canadian and the balance foreign. In other stations which do not broadcast French folklore, it would possibly be five per cent Canadian and the balance foreign.

Q. Have you any programmes here?—A. No.

Mr. LADNER: Perhaps the witness could furnish us with some, with a number of programmes broadcasted by his own paper, and any others he can give us over a period of time.

WITNESS: I could send you the files of *La Presse* for three years back.

The CHAIRMAN: We would like it a little more condensed than that.

By Mr. Ladner:

Q. The point I had in mind was to find out, over a period of years, the actual proportion of Canadian authors as compared with foreign authors, and then the proportion of American authors separately?—A. I think it could be traced, but it would take some time, Mr. Ladner.

By the Chairman:

Q. You could send that to the Committee after your return?—A. Yes, I could forward it.

The CHAIRMAN: Any questions?

By Mr. Chevrier:

Q. So *La Presse* operates this station for nothing, no profit?—A. No sir.

Q. For no profit, direct or indirect?—A. No sir.

Q. It spends \$40,000 a year on this?—A. Yes sir, that is approximately.

Q. Where do you get that money?—A. From the newspaper owners, I suppose.

Q. Do not say, "I suppose." Say whether you get it from the newspaper owners or where you get it?—A. The owners of *La Presse* in our case.

Q. They take out \$40,000 to maintain the station?—A. Yes sir.

Q. And in return they get absolutely nothing?—A. Goodwill.

Q. What goodwill?—A. You give something besides buying a paper for two cents. He knows he is going to get an entertainment.

Q. What was the circulation of *La Presse* three years ago?—A. Possibly 30,000 less than it is now.

Q. Thirty thousand less?—A. Possibly.

Q. Then what do you mean by making the statement on your front page the other day that you had increased by 20,000 a day?—A. Not a day.

Q. Recently? It is on the front page of your paper?—A. Compared with the same day last year.

Q. You do not say that?—A. There is always a catch in these things.

By Mr. Hocken:

Q. You are not the circulation manager?—A. No, nothing to do with it, only broadcasting.

By Mr. Chevrier:

Q. You say it has increased by 30,000?—A. It is nearly 200,000 daily.

Q. It has increased in the last two years?—A. It has increased on account of the better editorial policy and good management of the paper, and so on.

By the Chairman:

Q. When was the radio installed?—A. Three years ago in June.

By Mr. Chevrier:

Q. You know the contents of your studio?—A. Yes.

Q. Is it not a fact that in your studio you have a piano?—A. Yes.

Q. Where did you get that piano, who paid for it?—A. It was paid for from the Chickering.

Q. Do you carry advertising for the Chickering in your newspaper?—A. I don't know.

Q. You won't deny it?—A. I cannot say yes or no. You are asking things I do not know.

Q. You have a Victrola in your studio?—A. Yes.

Q. Did you pay for it?—A. I don't know.

Q. What is the name of it?—A. I think it is a "Graphonola."

Q. You carry advertising of the Graphonola in the newspaper?—A. Mr. Chairman, I am being asked questions I do not know.

Q. You can say whether it is or not?—A. It is not my department.

The CHAIRMAN: When he says he does not know I think that should be accepted.

[Mr. J. N. Cartier.]

WITNESS: I will tell you anything you want to know about our broadcasting.

By Mr. Chevrier:

Q. I will get it, don't you worry. You say you do not know whether you are carrying advertising of the Graphonola? Say "Yes" or "No"?—A. I don't know.

Q. All right, that ends that. You broadcast the music of the Mount Royal?—A. No, sir.

Q. Where is the broadcasting of the Mount Royal done?—A. By the Marconi company.

Q. Through what station?—A. The CFCF.

Q. That is no longer *La Presse*?—A. No, sir.

Q. Previous to that you used to have the Windsor broadcasting?—A. Yes.

Q. Who pays for that?—A. The Windsor Hotel pays the expenses of a technician and the expenses of the telephone line and also the amplifying units, the microphone system and the wiring. Here is another thing; the Windsor Hotel and the Frontenac breweries are really in partnership with *La Presse* in the operation of the station. They help to pay the expenses of the station.

Q. And they do that for the love of Mike, do they?—A. It is good-will; I suppose they do it for the sake of selling beer, in the case of the Frontenac.

Q. Didn't you broadcast a lot of the Frontenac concerts?—A. Yes, we are still doing it.

Q. What is the arrangement?—A. The Frontenac breweries are giving their advertisements to the paper, and as good-will we are giving them some radio service.

Q. You do not know whether the Frontenac brewery pays for the insertion of these notices in *La Presse*?—A. I could not say that.

Q. Do you think *La Presse* does it for nothing?—A. I doubt it.

Q. That is the best answer you have given yet.—A. That does not concern the radio.

By Mr. Hocken:

Q. Do the Frontenac people pay any higher rate per line because of the radio?—A. You are asking me something I do not know.

By Mr. Chevrier:

Q. Let us take it this way, then, Mr. Cartier; you do not know much?—A. I know little about the paper.

Q. If *La Presse* is making no profit, direct or indirect, what is your trouble with reference to this amendment?

Mr. LADNER: Would you make it clear that you have proposed this amendment; I do not think the witness understands and I put the question the way I did so he would give the answer perhaps differently.

By Mr. Chevrier:

Q. Do you know that the bill has been amended—

Mr. LADNER: There is a proposal.

The CHAIRMAN: Just state the effect of it.

By Mr. Chevrier:

Q. Listen to this; you are a good business man.

"(g) 'performance' means any acoustic execution of a work or any visual representation of any dramatic action in a work, including such execution or representation made by means of any mechanical instrument

[Mr. J. N. Cartier.]

and any communication, diffusion, reproduction, execution, representation, or radio-broadcasting of any such work by wireless telephony, telegraphy, radio or other kindred process. Provided that any communication, diffusion, reproduction, execution, representation or radio-broadcasting by any such wireless, radio or other kindred process, when made for no gain or interest, direct or indirect, shall not constitute a performance under this paragraph."

Now, if your paper makes no profit direct or indirect from the radio, this does not affect you.—A. It does not yet, but we are hoping some day that we may make money out of radio, like every other business.

Q. Then do you think it is fair that if you make a profit you should not pay for it?—A. Yes, if we pay for it; yes.

Q. You should pay for it?—A. Yes, but we want to know what we should pay.

Q. If you make a profit, you should pay; if you make no profit, you should not pay.—A. We should not pay.

Q. I agree with you. Now, do you know that section 508A of the Criminal Code has, since 1915, been the law, that if you make a profit you are bound to pay?—A. I did not know that.

Q. At no time has that interfered with you?—A. No.

Q. You did not know that, but you know it now. Since 1915 you have not been interfered with, and you have not paid any rights?—A. No.

Q. What is your fear now?—A. The fear is this, the way it reads it means, "whether direct or indirect" revenue.

Q. Let us get down to business. If it is direct or indirect it must be gain or profit?—A. Yes.

Q. You are satisfied to pay when you make a profit?—A. Personally I do not know whether I am satisfied or not; I am not the one to dig down in my pocket and give the money.

Q. What?—A. Personally I do not know whether I am entitled to say that or not.

Q. As a reasonable man you do not expect to take the music of these people and make money without paying them?—A. Not if we made a clear profit.

Q. Then you say that if you have to pay the royalties it is going to put you out of business? You say the radio investments were \$30,000,000 last year, and that they will probably be \$50,000,000 this year.—A. That is what I gather from our promotion department.

Q. Do you know what the royalties are on these musical works?—A. No.

Q. You have never been bothered yet. Would you be prepared to make a fair bargain with an author?—A. What would you call a fair bargain?

Q. Something the both of you could reach?—A. Not until we established that we were making money. At the present time it is for the public welfare.

Q. Now you are not making money, and you refuse to pay any royalties. But if the day should come when you should make a profit, would you begrudge a few cents of royalty to the author?—A. I would rather wait until the time comes to discuss that question.

Q. It is a question of principle. Would you, then, want to take my song notwithstanding anything to the contrary, against my consent? That is what you want to do, take my song without paying me ten cents.—A. If the station were paying?

Q. Yes.—A. I am not in a position to say yes or no.

Q. Why not?—A. Because that time may come.

Q. Even though your vested interests then may be \$60,000,000, you do not know whether you would then pay me ten cents?—A. No.

Q. You do not think you would?—A. I would not say that.

By Mr. Irvine:

Q. Supposing *La Presse* increased its circulation by ten thousand next year; supposing you had reason to believe that the radio had some influence on that increase, and supposing Mr. Chevrier were going to ask you to pay a royalty on the basis of the increase; would you have any means of knowing how much was due to the radio, or how much was due to the news editor, or how much was due to the management direct or advertising, or anything?—A. Absolutely not.

Q. It would be difficult, in your opinion, to prove in a court of law that you made any revenue from your radio business?—A. Yes.

Q. Consequently, it would be very foolish to put a law like this on the statute books?—A. Yes.

By Mr. Chevrier:

Q. Have you a contract with Dupré to broadcast any of his concerts?—A. No, sir.

Q. Never had at any time?—A. I think we did last year, or two years ago.

Q. You are not doing it now?—A. No, sir.

Q. You said there was ten per cent of your programme that was Canadian?—A. That is a rough estimate.

Q. Then there is 90 per cent foreign?—A. Chiefly, as far as music is concerned, orchestra selections and so on.

Q. You would not be paying royalties on those?—A. Not at the present time.

Q. You would, if the authors wanted to exact them. They can do it now, they could have done it since 1915.

MR. LADNER: I do not think it is quite fair to put it to the witness that way, because there seems to be a difference of opinion on that point. We had Mr. Guthrie the other day—

MR. CHEVRIER: Yes, but Mr. Hahn, who came immediately afterwards, said he would not touch it because he knew the law.

MR. IRVINE: If we can exact these charges now, I have a right to ask the witness if he thinks there is any use in making an amendment to the law at all.

MR. CHEVRIER: I do not want to touch that side of the question; I have more important ones than that.

MR. IRVINE: That is very important to me.

By Mr. Chevrier:

Q. In that ten per cent out of the programme, what would ten per cent of the number of the items be?—A. Canadian.

Q. Out of fifteen items, what would be the number of Canadian items?—A. We may have on certain nights a concert composed of say twenty selections which would be, say, American jazz. We may have ten selections which might be Hungarian and Swedish and Norwegian and so on, and then we may have a French-Canadian to sing half a dozen of his own songs.

Q. Then take the French-Canadian who comes in and sings half a dozen of his songs. He would come because he would feel like it?—A. Absolutely.

Q. Of his own free will. He would say to you, "Mr. Cartier, I have composed some songs and want to sing them over your radio. Will you let me do it?" He would do it and not charge you anything?—A. No.

[Mr. J. N. Cartier.]

Q. On the other hand you might find one who would say, "All right, you want that song of mine sung, but who is going to be the artist to sing it?" You say, "Mr. So and So." He says, "Yes, he is a wonderful singer; you may have my song free." You may say, "Mrs. So and So will sing this song," and he will say, "No, not for any consideration, because she cannot sing it right. You get somebody else and you can get it for nothing." You say, "I will take your song." He says, "You cannot unless you pay me \$25 for it," and you cannot get it. By asking for the royalty I can stop you from singing my song if I think you are going to massacre it. If I know you are going to sing it right, you may get it without cost. If you are dealing with the publisher to whom I have assigned my rights, then there is a royalty commensurate with the broadcasting outfit and the popularity you are giving to it. That is the whole system.

By Mr. Hocken:

Q. What did you say, Mr. Cartier, about the advertising value for the sale of the music, by publishing it over the radio?—A. Very big.

Q. These French-Canadians who will sing a song over your radio voluntarily, they do it for the advertising and the promotion of the sale of that song?—A. Yes, sir.

Q. And thereby make their profit?—A. Yes.

Q. What would you say from your experience—perhaps you may have heard from other stations as well—as to the general advertising value of broadcasting any new song?—A. The broadcasting of a new song, if the song is good, will make it pay in a very short time, or if the song is bad, it will kill it in an equally short time.

Q. Then the author stands to profit by the broadcasting?—A. Yes, sir, very much so.

By Mr. Irvine:

Q. Supposing this law were to go into effect, and supposing an artist were singing in your broadcasting station and that you had agreed to pay a royalty on the song the artist was singing.—A. Yes, sir.

Q. But the author of the song was living in Vancouver, and this singer happened to be a very poor singer; so long as you paid that royalty, the author in Vancouver would have absolutely nothing to do with the selection of the medium?—A. No, sir.

By Mr. Ladner:

Q. The suggestion has been made that by broadcasting songs, a song may be worn out, so to speak, quicker than if the author was able to circulate it in another way. In other words, there is a loss of revenue from the broadcasting station because people get so fed up with hearing this or that song that they are not willing to buy it. What do you say about that?—A. If a song is very good, and it is well rendered in the radio, the next day, or the next week, everybody will want to buy that song. If you keep on singing it in the air until the novelty is worn off, it does not harm the publisher or the composer.

By Mr. Chevrier:

Q. Why don't you make a bargain with the author to get that song?—A. Why make a bargain and give away money when we are doing it for the welfare of the public?

By Mr. Irvine:

Q. Supposing Mr. Chevrier was to make a speech in the House of Commons and it was recorded in Hansard; supposing there is a man delivering a lecture in Prince Edward Island who wants to consult Hansard on this par-

[Mr. J. N. Cartier.]

ticular subject, and he is being paid for his lecture. He selects a quotation or an idea from Mr. Chevrier's speech. Has Mr. Chevrier any right or power to choose who shall be the disseminator of his ideas?—A. No, I do not think so.

Q. Then would it be fair to grant to a song writer a protection which we do not give to the other.

Mr. CHEVRIER: That is covered by section 16, (1).

"Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary."

The CHAIRMAN: I understand that Mr. Wallace desired to ask a question.

Mr. WALLACE: A member of the Committee has already asked the question, and I have the information.

Witness retired.

HENRY T. JAMIESON called and sworn.

By Mr. Irvine:

Q. Whom do you represent?—A. The Performing Right Society of London, England. I am Chairman of the Canadian Performing Right Society which has been formed, or is in process of formation, the chief object being to protect the rights of the Performing Right Society of London, England. I have nothing at all contentious to say as to the legislation now under consideration; I wish merely to make a short statement of certain interests and considerations which we think are deserving of attention by members of the Committee.

The Performing Right Society Ltd. of England is an association of authors, composers, publishers and other owners of musical, literary, or dramatic copyrights granted under the British Copyright Act of 1911, established to protect and enforce their rights, to restrain unauthorized use of their works, and to collect fees for permission to perform the same in public. Until the society was formed in 1914, British composers and others received no fees for performing rights in their works. The society controls over a million works; it embraces all the British Dominions, and is affiliated to kindred societies in France and Italy.

The Performing Right Society, Limited, is vitally interested in the Copyright Act of Canada. By it, it hopes to be enabled to collect on behalf of its members, just dues for the use and performance of its large repertoire, just as by the British Copyright Act of 1911 it is entitled to collect such dues for the use and performance of that repertoire in Great Britain.

It is important to note that this organization was formed to satisfy the need of copyright owners on the one hand and promoters of entertainments on the other, and has worked excellently in the interests of both. The great difficulty experienced by individual copyright owners in collecting the performing fees due to them and the great difficulty of promoters in establishing the identities of the proper payees for the fees due by them, made such an organization as this an absolute necessity.

Composers, authors and other owners of copyright musical works join the society to avoid the trouble of issuing permits and collecting fees personally, and to secure the advantages of an organization which has representatives throughout Great Britain and Europe.

I may say that there are approximately 1,000 members in this Society, that is British members.

Members, as distinct from license-holders, or subscribers, on election convey to the society full powers to exercise and enforce on their behalf all rights and remedies in respect of the public performance of their works, and to grant licenses and collect fees for same. I have a wire or a cable from the Performing Right Society of London, which says:

[Mr. Henry T. Jamieson.]

"Understand broadcasters endeavouring have Canadian Parliament enact free musical broadcasting. This would be violation Berne Convention and invasion authors rights which are voluntarily recognized here by British Broadcasting Company and fees paid for same. Australian regulations stipulate no transmission of copyright work without owners' consent. Proposed new American copyright law also reserves broadcasting rights to author.

PERFORMING RIGHT SOCIETY, LONDON."

The right to collect fees has been generally admitted and numerous licenses have been taken out by individuals and associations, controlling or representing large numbers of places of entertainment, such as Cinematograph Exhibitors' Association of Great Britain and Ireland, the Provincial Entertainments Proprietors and Managers Association, the Entertainments Protection Association, Limited, etc., etc. Also with municipalities such as London County Council, the cities of Glasgow, Edinburgh, Manchester, Liverpool, Birmingham, Sheffield and many others.

From time to time it was necessary for the Performing Right Society Limited to take action to enforce the rights of the owners. One important action was that of the Society vs. Thompson, and which was tried in the High Court of Justice, King's Bench Division, before Mr. Justice Atkin, Wednesday, April 10, 1918. The following are extracts from the Judgment:

1. "There is no doubt it comprises a large number of persons who in every respect represent the musical world so far as it can be judged by the composition and publishing of popular music."

2. "I am quite satisfied that this is a society which has a perfectly genuine and legitimate object which is carried out by perfectly genuine and legitimate methods and it is a society which appears to me to perform a very useful function for the protection of.....artistic gentlemen, musical composers and for securing to them the full reward for their compositions.... As to the legality of the society and its objects and methods, I am perfectly satisfied."

3. "I certainly think that it is satisfactory to find that this Society which after all in the present case is merely engaged in securing the fruits of their labours to the musical composers, has a legal object and cannot be defeated in what one cannot help feeling is a position of public interest."

This society is collecting fees under the following tariffs:—

Tariff for Provincial and London suburban theatres and for music halls and cinemas; tariff for provincial licenses to piers, hotels, restaurants, tea rooms, halls, etc., and concert parties, bands, orchestras, and for occasional concerts; tariff for municipal and other corporations and urban district councils; tariff of license for dancing academies, halls or assemblies; tariff of charges for broadcasting of music from places of public entertainment and for public wireless entertainments.

In regard to wireless broadcasting, it is to be noted that fees are charged not only to the broadcasting stations, but to all places where the broadcasting service is publicly received and heard.

That the society is fulfilling a useful function is proved by the fact that the total amount distributed to the members of the society up to April 5, 1924, exceeded £134,000.

As Chairman of the Canadian Performing Right Society, I would view with regret the passing of any clause by which severe penalties could be exacted from or imposed upon those who, in ignorance, had failed to pay just dues for the use of copyright material. Rather would I prefer to see the enactment of reasonable

penalties which could be enforced in law, the object of the enforcement being to prove the right of owners to collect rightful dues rather than to exact a penalty.

We are in favour of the principles underlying the proposed amending legislation and which we understand is intended to establish the rights of copyright owners.

Now, Mr. Chairman and gentlemen, I am personally not versed in copyright law; I do not pretend to be. I am merely a chartered accountant who was asked to take charge of the organization of this society in Canada. I would be very glad if there is any information you would like me to obtain from our principals, to get it for you either by cable or letter.

By Mr. Ladner:

Q. In what respect would the radio, free broadcasting, be an infringement of the Berne Convention?—A. That is the statement of my principals, which I submit for what it is worth.

(Mr. HOCKEN having taken the Chair):

By the Acting Chairman:

Q. You have a society with headquarters in Toronto?—A. The headquarters of my principals are in London.

Q. But in Canada?—A. In Canada we are forming a society with headquarters in Toronto, but it is just in process of formation.

Q. Have you agents in different parts of the country?—A. Not so far. The society is being formed with the object of protecting the interests of this English society, which, so far, has received nothing for the use of its large repertoire.

The ACTING CHAIRMAN: Thank you, Mr. Jamieson.

The witness retired.

The Committee adjourned.

FRIDAY, March 20, 1925.

The Special Committee appointed to consider Bill No. 2, an Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 10.30 a.m., Mr. Raymond, the Chairman, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Lewis, McKay, and Rinfret.

In attendance:—Mr. George F. O'Halloran.

The CHAIRMAN: There is a communication from Mr. Appleton. The secretary communicated with him, as the Committee desired at the last meeting, and there is a reply from him which Mr. Cloutier will read to you.

The CLERK (*Reads*):

"TORONTO, March 18, 1925.

DEAR SIR,—

"Your telegram of to-day's date just received does not give me sufficient notice to arrange to reappear before the special committee on Friday morning, although it may be possible to arrange it for Tuesday morning if absolutely necessary.

"I did feel that my wire of March 14th, as well as my explanatory letter of March 16th, were sufficiently explicit in stating my views, to go on record, and I would be quite satisfied if this were done to avoid the necessity of my reappearing. Kindly advise me regarding this.

Yours very truly,

(Sgd.) F. F. APPLETON."

[Mr. Henry T. Jamieson.]

The CHAIRMAN: The secretary replied to that letter to the effect that the evidence given under oath could not be corrected except by another statement given under oath. We conceived that to be the idea of the Committee when the question came up at our last meeting.

Mr. LEWIS: Is Mr. Appleton to come here again or not?

The CLERK: I have received no further reply.

Mr. LEWIS: It was proposed by Mr. Chevrier that all his evidence be struck out and that he be recalled.

Mr. CHEVRIER: I did not move that, but I suggested that if he did not come, his evidence should be all struck out. I am not concerned with his evidence at all.

The CLERK: We cannot undertake to change any portion of his evidence even in accordance with the views or statements that he makes in his letter. If it is the desire of the Committee, I could wire Mr. Appleton to be here on Tuesday without fail.

Mr. LEWIS: Would the evidence he gives be supplementary evidence, or which would be the correct evidence?

The CLERK: It would have to be authorized by the Committee if his evidence is to be struck out.

Mr. CHEVRIER: I think, Mr. Chairman, we should leave it as it is. A gentleman comes here and makes a statement under oath, and is cross-examined. Then he writes a letter in which he says that the evidence he had given here does not reflect his views. I think that we should leave his letter and his evidence also for the appreciation of the Committee when the times comes for consideration of the evidence. In the light of his statement, we can waive his evidence and see what it is worth.

The CHAIRMAN: His evidence was largely a matter of opinion. It is not like evidence given in a case in court. However, what is the desire of the Committee? Should we have it as it is, or have him here again on Tuesday?

Mr. LEWIS: In the light of his further statement, we would have to weigh his evidence carefully. I move that we do not ask him to come again.

Motion agreed to.

The CLERK: We have as witnesses to-day his Honour Judge Constantineau and Mr. de Montigny. These are the only two on the list.

HON. ALBERT CONSTANTINEAU called and sworn.

By Mr. Chevrier:

Q. Judge Constantineau, you are the author of a book called. "Constantineau on the De Facto Doctrine"?—A. Yes.

Q. Where did you print that book?—A. In Rochester, New York.

Q. Why?—A. Well, the printing was a good deal cheaper there than it was in Canada; that is one of the reasons.

Q. Are you interested in any way in a certain corporation in the United States called something like "The American Radio Corporation"?—A. It is The Radio Corporation. It is a listed stock on the New York Stock Exchange. Yes, I have an interest in it.

Q. Is it a big concern?—A. There is about \$1,100,000 shares of common; no bonds. The corporation is about \$150,000,000, I suppose. I am speaking only from memory.

Q. That is, the capital of that corporation is about \$150,000,000?—A. Yes.

Q. And you have a certain interest in that corporation?—A. Well, yes.

[His Honour Judge A. Constantineau.]

Q. Now, I do not know whether you have heard the evidence given here or whether you have taken any interest in it, but the authors of musical works at present are engaged in having their rights of royalties respected. What do you say as to the right of the musical composer to claim a royalty on his works, even when they are broadcasted?

Mr. LEWIS: Mr. Chairman, I think before Mr. Chevrier questions the witness he should be asked whom he represents, whether he has a statement to make, or is here for cross-examination, the same as the other witnesses, and then we will know where we are.

By the Chairman:

Q. Are you representing any interests?—A. No. I may say that the reason I am here is because I was asked by the Chairman to be present; I am not a volunteer in any way. In fact, I should be very busy in court this morning, but I acceded to the request of the Chairman and I am here to-day.

By Mr. Chevrier:

Q. In other words, Judge Constantineau, you represent nobody but yourself?—A. Not at all.

Q. As a shareholder, or as one who is interested in this Radio Corporation, do you think that it is a fair measure for owners of musical works to claim rights on their works that are broadcasted, or do you think it is an unfair demand?—A. I think the authors should receive royalties. I cannot see what difference there is between broadcasting and using their works in any other way.

Q. As one of the shareholders you are not apprehensive that the payment of royalties will ruin your company, or, if you are drawing dividends, reduce them to nothing?—A. Well, we are not drawing dividends, but I am not afraid of that. The Radio Corporation of New York is perhaps the largest corporation in the world on radio, and I do not think it will affect their earnings very much if they have to pay a little to the author.

By Mr. McKay:

Q. Do you have to pay anything now?—A. I beg your pardon.

Q. Do you pay a little now?—A. I am not familiar with that; I do not know whether they pay or not. I do not suppose it is necessary for me to venture an opinion on how it should go.

Mr. CHEVRIER: I have no further questions.

By Mr. Lewis:

Q. What do you say as to the rights of the author to absolutely control his works?—A. I think he has property in his works—a statutory property; I mean property that is or should be guaranteed to him by statute. I think he should have control of his works just like any other man who owns any property has control over it.

Q. At the present time, under the existing law, he does not have absolute control?—A. Well, I know that; it is qualified property.

Q. There is no objection to certain lecturers using part of his works in a public lecture?—A. I know that. It would be very hard for a law to forbid that.

Q. What do you say about an author placing his book in a public library, where it is the property of the public?—A. I suppose that is another thing that cannot be prevented.

Q. Is there any distinction—I know it is covered by law—but is there any distinction between placing a book in a public library where it is open to the whole city, or to the world for that matter, and singing a song over the radio and broadcasting it? What is the distinction?—A. Of course, I may say that I

[His Honour Judge A. Constantineau.]

have not given a great deal of thought to the matter, but I consider if you use a play, for instance, in a public theatre, you have to obtain leave from the author. Well, if you give this performance over the radio, it is a performance that goes to the public, and I do not see why, when this performance is given over the radio, the author should not receive a royalty and be compensated for it.

Q. But the broadcasting station does not receive direct benefit from its own audience?—A. This question is being discussed very much in New York just now.

Q. I say, direct from the audience, listening in?—A. Very well, but at the same time there is a very great deal of discussion about it. The theatres are objecting to the radio broadcasting certain songs and certain things like that, and if you want my opinion on that—and I have given some thought on the subject and have discussed it with many people—I do not think that people are entitled to have anything for nothing. The difficulty is to make the public pay. If I go to a theatre, I pay so much for my seat and so much to listen to a song, or to be present at a certain performance. I do not see why the public should not pay when they receive a performance over the radio. However, the difficulty is to collect it, and after discussing the matter with many people, I have come to the conclusion that the only way to do would be to tax every man who owns a radio; a certain amount of that money to go to the government to defray the expenses of collection, or to pay for certain licenses, and the balance should be placed in a fund, so if the radio company wanted to use a song or a play or anything of that kind they would have the right to use it under certain conditions, and the author would be compensated by receiving something from that fund. I cannot understand why, because I have a radio that cost \$200, in my house—or possibly less, because there are cheaper instruments now—I should listen to the best music of the world and the finest things in art of that nature and not pay a cent for it. I think it is unjust to the author and that I should pay something for it.

Q. It may be unjust, and possibly your remedy is more equitable than the one in the bill, but in a theatre you have a circumscribed area and a limited audience; international boundary lines are no barrier to the radio, and the result is if you place a handicap upon Canadian institutions, you are not at the same time handicapping the American institutions with the result that we are able to still hear the same songs and the same music in our own homes from other sources?—A. I must admit I am not conversant with the subject. It is from a financial standpoint that it has been discussed. I have heard it discussed many times in the financial section of Montreal, and the views I have expressed just now are the views of the particular men who have given thought to it.

Q. You would think the best way to collect it would be at the same time the tax on the radio is paid?—A. Yes.

Q. How would you discriminate between, say, a crystal set that can only receive up to about 50 miles, and the larger sets with the unlimited distance?—A. That would be easy to grade. If I had a radio in my house that cost \$500, I should pay more than the man with a radio costing \$100 or \$50.

Q. Do you think this bill would be detrimental to the radio people in Canada in general?—A. I am sorry to say I have not seen the bill, so I do not know.

Q. As an author you think that certain rights and the privilege of exercising those rights should be given to them?—A. Yes.

By Mr. Chevrier:

Q. From the point of view of a shareholder in a large corporation—A. Yes; no matter whether a man is a shareholder or not, he ought to be just.

[His Honour Judge A. Constantineau.]

By Mr. Lewis:

Q. You are a shareholder in a corporation?—A. In the New York Radio Corporation, the largest in the world.

Q. It has a broadcasting station?—A. Yes, and they are building the biggest broadcasting station in the world.

Q. And they manufacture too?—A. Yes.

Q. And by broadcasting they receive benefits as a result of the advertising they get?—A. Yes.

Q. It is broadcasting for the public good?—A. Well, of course, when you ask me these details I cannot give them to you. I saw in the Wall Street Journal the other day—or, rather, some time ago—that very little of their profits come from broadcasting; they are in the manufacturing business.

Q. From a manufacturing standpoint, that is where they are looking for profits?—A. Yes; I think they use the other for advertisement, more or less.

Witness retired.

Mr. LOUVIGNY DE MONTIGNY recalled.

The CHAIRMAN: Gentlemen, this witness has already been sworn and it will not be necessary to swear him again.

The WITNESS: Mr. Chairman, before I read my statement, may I be permitted to give the information which I think Mr. Lewis is looking for when he asked the Hon. Judge Constantineau about giving fair play to the public. On page 3 of Mr. Chevrier's bill, section 6 (1), it is provided to give to the public fair dealing with any reasonable quotation or extract, without restriction at all, so for a lecture, a sermon, a song or any literary work at all, when it is fairly dealt with, it is already provided for in the Bill. Subsection (i) of section 6 (1) of Mr. Chevrier's Bill No. 2 provides for that.

The CHAIRMAN: Will you read that section?

The WITNESS:

"Paragraph (i) of section 16 of the said Act is repealed, and the following is substituted therefor.

"Any fair dealing with or any reasonable quotation of an extract from any work for the purposes of private study, research, criticism, review, or newspaper summary."

By the Chairman:

Q. You have a statement to make, Mr. de Montigny?—A. If you please.

The CHAIRMAN: Gentlemen, we will listen to Mr. de Montigny.

WITNESS: On this radio copyright issue, I beg leave to appear before your Committee as Canadian correspondent of the following English, French and International Societies which are legally entitled, as I will show hereafter, to claim protection in Canada for the literary, musical and dramatic works of their respective members:

The Music Publishers' Association, Ltd. (London, England).

The Incorporated Society of Authors, Playwrights and Composers (London, England).

The Mechanical-Copyright Protection Society, Ltd. (London, England).

La Société des Gens de Lettres (Paris, France).

La Société des Auteurs & Compositeurs dramatiques (Paris, France).

French and Italian Music Publishers.

La Société générale Internationale de l'Edition phonographique et cinématographique (Paris, France), and

Le Syndicat de la Propriété artistique (Paris, France).

[Mr. L. de Montigny.]

I am also the Canadian correspondent of "Le Droit d'Auteur," official organ of the Bureau of the International Union for the protection of literary and artistic works, at Berne (Switzerland).

Notwithstanding the interest of the above mentioned concerns, I beg to appear in a capacity which, I am confident, will appeal more to your Committee. That is to say on behalf of Canadian authors, composers and artists for whom the Canadian Authors' Association is seeking such fair legislation as would afford to them that same national and international protection which is now granted to Canadian labour organizations, and which would make it secure, for the artisans engaged in the shaping of Canadian intellectual material, an honourable career.

If your Committee allow me, I will submit to you, gentlemen, on behalf of the above mentioned associations and societies, a few observations specifically bearing on Canadian radiographic reproductions of the works pertaining to their members.

Several witnesses have laid before your Committee evidence to convince you that the radio-broadcasting of music is subject to no legislative control in the United States and that music must also be free in Canada, in order not to jeopardize Canadian radio industry.

I beg to state here that, because of the accurate information with which I have been supplied, I verily believe that the wide agitation created in Canada, for the purpose of securing free music for any radio purpose, is in pursuance of a campaign of misinformation as to the facts as they are, regarding the use of such works by the radio broadcasting stations.

On being informed of the representations and allegations made before your Committee by the leaders of the radio industry, the American Society of Composers, Authors and Publishers has forwarded to us the following telegram:

Campaign of misinformation by radio broadcasting interests relative to policy of United States regarding use in radio performances of copyrighted material prompts us to request referring hearings on your bill covering subject until information we are sending to-day by mail reaches you.

(Sgd.) American Society of Composers, Authors and Publishers.

A similar telegram was received from the Music Publishers Protective Association, of New York:

Understand hearings pending upon Copyright Bill No. Two. Also brought to our attention radio interests in Canada misinforming Parliament as to facts governing procedure in United States regarding use in radio performances of copyrighted musical works. If consistent suggest postponing hearings until facts are ascertained concerning which we are writing you to-day.

(Sgd.) Music Publishers Protective Association.

The first object of such a campaign is to alarm Canadian radio fans, so as to induce them to help in the consummation of a scheme for obtaining from the Canadian Parliament a precedent intended to support Yankee concerns in securing in the United States a control over free music, which they have not yet been able to obtain, although, for the last two years, they have made the most strenuous efforts in that way.

Such a scheme should first interest the Radio Corporation of New York, which we could design as the Mother-House of the American radiographic industry of which our Canadian radio dealers are but very humble dependents. In this connection, your Committee may recall as somewhat significant the fact that the main evidence in favour of free music broadcasting was given

[Mr. L. de Montigny.]

here on March 13th, by Mr. R. H. Combs, who declared himself to be a Yankee born and non-naturalized Canadian; and, that the evidence following that of Mr. Combs, for the same purpose, was given by a representative of the De Forest Co., which is a branch of a powerful Yankee firm.

As to the existence of an underlying American influence interested in creating hostility to Bill 2, I can give to your Chairman in confidence the name of a broadcaster in Ottawa who has been grossly misinformed in this matter by an American agent.

I take the responsibility of declaring before your Committee that most of the evidence which has been given here by the radio dealers is in pursuance of a campaign aiming to mislead Canadian Parliament. Considerable official documentation is now being gathered and will be handed to your Committee. I will now point out the fact that a printed circular, dated March 2nd, 1925, circulated by the Radio Trades Association (Herbert Lewis, secretary) of 257 Adelaide street west, Toronto, contains the following statement:—

This contention ("that broadcasting should be termed a public performance for private gain") is denied by every other country where the composers and authors have sought to have this interpretation of the Copyright Act legalized.

This statement is untrue, especially for England and her Dominions.

The correspondence which I have exchanged during many years with American and European Societies accurately informed on all legislation concerning copyright, has so far revealed the existence of no legislation enacting free or unrestricted use of musical works for broadcasting. The Yankee radio dealers have caused to be introduced before the American Congress various bills seeking to grant to broadcasters the free use of copyrighted works, but they have not yet been successful.

Your Committee will be supplied with the official minutes of hearings before the United States Congressional Committees held during 1924, in which are set forth the reasons why Congress has deemed it proper not to grant the request of the radio dealers. Quite on the contrary, a new bill has recently been introduced before the American Congress, namely H.R. 11,258, which will very likely reverse the situation and extend still further the protection granted to copyrighted works. Your Committee will be supplied with copies of this bill as well as reports of hearings *pro* and *con*. As a matter of fact, the use of copyrighted works for American broadcasting is far from being free in the United States, and the jurisprudence rather inclines towards confirming the absolute right of the copyright holders: the first judgment rendered in American courts being in *re* Witmark & Sons vs. L. Bamberger & Co., United States District Court for New Jersey, August 11th, 1923. This first judgment supports the contention of the copyright owner against the broadcaster.

The radio dealers are endeavouring to make much of an adverse decision against the owners of copyright, in the case of Jerome H. Remick & Co., vs. American Auto Accessories Co. But this adverse decision has been appealed, and some representatives of the radio interests have declared to me that they are apprehensive of a reversal of the judgment rendered at the trial. Copies of the briefs on appeal will also be laid before your Committee.

Notwithstanding the fact that a coalition of Yankee printers and typesetters has, up to now, succeeded in delaying the adherence of the United States to the Union of all civilized countries for the reciprocal protection of literary and artistic works, and despite the fact that it maintains alive a state of mutual hardship and permanent retaliation between our Dominion and our neighbours, American organizations of authors and publishers are doing their utmost towards having foreign works protected in the United States. In fact, the Copyright Law of the United States affords full protection to any foreign author or com-

poser who complies with the provisions of the present American legislation. Here, I must call the attention of your Committee to the flagrant contradiction in the statements made by the seekers of free music in Canada; some of them have represented to your Committee that music broadcasting is completely free in the United States, whilst others, endeavouring to terrify the public, say that an American Society of Authors, under the Copyright Act, has compelled an American broadcasting station to pay \$5,000 of royalties.

As the Copyright Law of the United States stands to-day, a music composer is entitled to copyright in the United States; and the broadcasting, for profit, of his copyrighted musical works constitutes, in the United States, an infringement. The manager of De Forest Company, with his practical experience, has declared before your Committee on March 13th, that, under the Canadian Law now in force since January, 1924, the broadcasting of any copyrighted work is undoubtedly liable to royalties, without any exception for amateurs. So much so that if Canadian Parliament does not deem it expedient to more clearly put it in the copyright legislation, as suggested by Mr. Chevrier's Bill No. 2, interested authors and composers intend to bring before Canadian courts a test case on the radio performance of a copyrighted play, namely "Les Trois Masques," by Mr. Charles Méré, by the stock company of "Le Grand Guignol" at "La Presse" studio, in October, 1923.

To my knowledge, in no other country of the world, and even in the United States, legislation has so far provided for withdrawing the radio amateurs from the operation of the law which absolutely protects copyrighted works. In his amendment which purports to cover their situation, Mr. Chevrier's Bill assured the radio amateurs that they will not be asked a cent.

That is to answer the contention of the radio dealers aimed at alarming Canadian radio fans by leading them into the false impression that Parliament would handicap Canadian broadcasting stations in enacting legislation which would prevent Canadian broadcasters from freely supplying their customers with copyrighted works, whilst American stations are allowed to do so. At this hour, the Copyright law of the United States permits in no way the American broadcasting stations to freely use any copyrighted composition.

The provisions of the Copyright law of the United States, as well as the reports of hearings before the United States Congressional Committees, and the decisions of American courts, which will be laid before your Committee, will enable you, Gentlemen, to accurately verify the situation as it actually exists in the United States. The Canadian Authors' Association is fully confident that such official documentation will outweigh the misleading information given for the purpose of endeavouring to help the Yankee radio dealers to secure a legislative precedent from the Canadian Parliament.

In England, in France, in Italy, in Germany, and in such other Unionist countries, the principle of recognition of the copyright owners' right is not questioned, but on the contrary, is supported by the respective governments. More especially in England and in France, broadcasters and copyright owners have entered into gentlemen agreements, awaiting formal legislation in the drafting of which they join so as to protect every legitimate interest.

The possibilities of the radiographic developments are already known as being practically unlimited. For instance, an average broadcasting station as, let us say the one of "La Presse," actually reproduces any kind of musical pieces, literary works and even dramatic plays. Last week again, a full cast of actors gathered in "La Presse" studio to broadcast a three-act play of Molière. In Paris, experiments are now being made of the use of a theatre-phone which devises at broadcasting a visual representation of a play simultaneously with the acoustic execution of a musical work. Radio broadcasting will soon cover the full field of artistic realizations.

[Mr. L. de Montigny.]

The Performing Right Society of London, England, on being informed of the evidence given before your Committee, have forwarded to me the following cablegram:—

(Sgd.) PERFORMING RIGHT SOCIETY, LONDON."

The Canadian Authors' Association respectfully submits that the Convention of Berne wholly prevents our Parliament from granting the request of the radio dealers in asking the free use of musical works which would imply the free broadcasting, in Canada, of the musical compositions of English as well as of French, Italian, German and other foreign musical works, all of which are protected in Canada by this convention. Inasmuch as Section 2 of the Copyright Amendment Act, 1923 (Chap. 10, 13-14 George V) has withdrawn Unionist authors from the operation of the restrictions imposed upon Canadian authors, by licensing sections 13, 14 and 15 of the Copyright Act, 1921, and inasmuch as, under section 2 (c) of our 1921 Act, a "book" shall include "sheet of music," we submit that Canadian legislation can impose no more restrictions upon the music of Unionist composers than upon a book of Unionist authors.

The licensing clauses are tantamount to the expropriation of the author's property and ^{on which} a monopoly for Canadian printers. In order to increase their profits, the ^{radio} ~~the~~ dealers go so far as to ask Parliament, not only to expropriate the property of the music composers, but to present the radio dealers with the gift of property which does not belong to Parliament, but to the authors.

A member of your Committee, Mr. Irvine, seemed anxious to obtain, from previous witnesses, some information about the rate of royalties which broadcasting stations are subject to pay copyright owners.

At the last sitting of your Committee (March 17th) Mr. Henry T. Jamieson, Chairman of the Canadian Performing Right Society, which is in process of formation, explained the operations of the British Performing Right Society of which he is now organizing a Canadian branch. Although Canadian legislation, as it actually stands, makes the unauthorized execution of a work by any mechanical instrument an infringement, no radio royalties have yet been collected in Canada. However, I might give you some information as to how the collection of radio royalties is likely to work.

In every country of the world, the rate of royalties is amicably determined between the authors and the reproducers of their works, by contracts or licenses, under tariffs in proportion to the quantity of reproductions used, unless a legislative enactment intervenes to establish a uniform rate, as in the case of the royalties payable on phonographical reproductions. Under the British Act, the royalties payable on such phonographical records have been $2\frac{1}{2}$ per cent on the retail price of each contrivance, for the first two years following the putting into force of the new British Act, and are now 5 per cent of the retail price. Our Canadian Act has lowered these royalties on records to a flat rate of two cents. The amendment submitted to your Committee on the 13th of March by Mr. Edgar Berliner, representing the Canadian manufacturers of records, suggests that this rate of two cents be again reduced by 10 per cent in certain cases.

Copyright owners will very likely organize some broadcasting rights collection Bureau, in Canada, on the plan of similar organizations which are now operating in Europe and in the United States.

For instance, the American Society of Composers, Authors & Publishers, in New York, enter into contracts with theatre managers who thus become entitled to execute copyrighted works for a fee (as near as I can recollect) of 10 cents per year and per seat. So, a theatre having a capacity of say 1,000 seats, would pay \$100 a year to perform the music it wants, three or four times a day, the whole year round. These royalties are, of course, paid by the firm exploiting the theatre and not by the listeners. Authors and composers are generally not as exacting as the radio dealers who try to impress that they are.

The following letter, signed by Mr. J. A. Astor, appeared in the "Ottawa Journal" of Wednesday last, March 18th:

"Sir,—In his letter to the Journal of 17th inst., Mr. Lawrence Burpee says: 'They (the authors) are not demanding exorbitant royalties from radio; they are not demanding royalties of any kind.'

Will Mr. Burpee deny that the American Society of Composers, Authors and Publishers have been demanding from broadcasting stations a payment of \$5,000 per year for the privilege of broadcasting the copyrighted compositions which the society controls?

(Signed) J. A. ASTOR."

I have communicated this letter to the American Society of Composers, Authors and Publishers, of New York, concerned in that letter, and here is the answer I have received by telegram:

"Loudemont—Ottawa.—Inference created by Astor's letter in 'Ottawa Journal' March 18th, entirely erroneous. ^{as use} does not reflect the facts. Suggest your waiting receipt of letter, mailed to-day which should reach Friday forenoon.

(Sgd.) AMERICAN SOCIETY OF COMPOSERS,
AUTHORS & PUBLISHERS."

The radio-manager of "La Presse," Mr. J. N. Cartier, stated here on the 17th of March that, out of the total number of works which he broadcasts, there is an average of 30 per cent of works which are presented to him by authors and composers who never ask him a cent of royalties, but are rather pleased to have the benefit of the publicity of broadcasting. Notwithstanding his three years experience, during which not one author has ever asked him a cent of radio-royalty, Mr. Cartier came from Montreal to Ottawa for the sole purpose of asking an enactment the subject of which, he declares, is to shield "La Presse" against the exorbitant claims of the authors.

A schoolboy is now aware that radio has become a gigantic industry which derives its net profits from the sale of radio sets. For the advertising and selling of the innumerable brands of radio apparatus, millions and millions of dollars are spent in inducing people to buy a set with accessories of all sorts and at all prices. "La Presse," for one, indulges in so favouring the selling of sets; but, according to Mr. Cartier, his main intention and purpose is to give free music to the public, to educate the masses, to keep the farmers on the farm, to bring city life to country folks, to make our exiled compatriots irresistibly homesick when Canadian lullabies are broadcasted to them, and finally to have them decide to quit their jobs in the United States and return forthwith to Canada with their families and savings. Although Mr. Cartier cannot declare that the radio-broadcasting of "La Presse" has to some extent contributed to the increase, represented by some 25,000 more copies a day in the circulation of that paper, he does not hesitate to declare under oath that his broadcasting of folk-songs has, to a large extent, helped the repatriation of our nationals. "La Presse" broadcasting station thus works *pro bono publico* and for no profit. Far from asking a subsidy from the Immigration Department for such an efficient assistance, "La Presse" pays a high radio tax to the Government. And it does not protest against paying for everything which may be needed in the operation of a service of such national utility which costs it some \$40,000 a year. This expenditure is made solely for a philanthropic and national object. When asked if the radio-broadcasting has increased the advertising earnings of "La Presse," Mr. Cartier swears that he knows nothing of that, as he has nothing to do with the book-keeping of "La Presse" Publishing Company. Yet, he knows enough to swear that the radio-broadcasting of "La Presse" produces no profit. Mr. Cartier admitted that Mr. Chevrier's amendment is to withdraw non-profiteering or amateurs from the payment of royalties, and, yet, he insists that your Committee should kill such amendment. For Mr. Cartier knows that no court of justice will ever take his statement that "La Presse" operates for no profit; for he knows how easy it would be, for any interested copyright owner, to prove that "La Presse," in the operation of its philanthropic broadcasting station, actually derives large profits directly drawn from the exploitation of the literary, musical and dramatic works.

In connection with this profit and no-profit performance, perhaps I may be allowed to make a quotation from Mr. E. Blake Robertson's "Copyright Hand Book for Roll and Roll Makers." Mr. E. Blake Robertson is about the cleverest man to expound any copyright legislation. Referring to the manufacturer of records, he shows that when he lays his hands on a work which the author fails to copyright, that very moment he becomes the owner of the work without applying to the composer, even if the author or composer has worked for fifteen years sweating blood to complete his work. (Reads.)

"Where copyright has never subsisted in Canada for the musical composition utilized in making the record or where such copyright has expired then the maker of the record or roll is the sole copyright owner and he may give or withhold the right to the use of his record or roll for 'public performances.' It is a matter of commercial policy for record

[Mr. L. de Montigny.]

and roll makers to decide as to whether their records or rolls shall carry notification expressly prohibiting or expressly sanctioning the use of such records for 'public performances.'

Although the Act provides that 'public performances' of the above class must be for 'private profit' it is likely that every Court would hold that the proprietor of a restaurant or dance hall, who furnished music did so for his 'private profit' and that the music constituted just as much a portion of the service as did the other necessities, conveniences or luxuries with which his guests were supplied."

I quote that to show how broadcasting benefits "La Presse" by increasing its clientele.

In order to reassure the radio dealers and amateurs, against any unreasonable demand or exaction from the copyright owners, I, for one, would be glad if the law determined the rate of royalties on the broadcasting of copyrighted works. If the law does not provide so, then it is a question of agreement between the broadcasters and the copyright owners.

In order to demonstrate to your Committee that Canadian authors are not as rapacious as radio-dealers have tried to make out, let me refer you, Gentlemen, to section 10 of Mr. Chevrier's Bill which introduces a new section 23c, paragraph (d) which provides that minimum damages be determined by our Copyright Act, just as minimum damages are prescribed by the Copyright law of the United States, as they are in the British statutes which applied to Canada before their repeal by section 47 of our 1921 Act, and as they were in section 37 of our former Copyright Act (Chap. 70, Revised Statutes 1906).

Paragraph (d) of said Section 23c (of Mr. Chevrier's Bill) provides that, for the infringement of a work by execution through radiographic process, damages shall not be less than one dollar. That is to say that the copyright owner, after having proved to the satisfaction of the Court that his work has been infringed for profit, and after having incurred the costs and fees of his suit, may be awarded at least one dollar of damages.

Now, in order to compare the standard of protection which we ask, with that recognized by the law of other countries, let us refer, for instance, to the Copyright law of the United States, which our printers and radio-dealers so repeatedly invoke before your Committee. The fourth paragraph of section 25 (b) of the Copyright law of the United States reads as follows:—

"25. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States, such person shall be liable:

(b) •To pay to the copyright proprietor.....

(4) In the case of a dramatic or dramatical-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance; in the case of other musical compositions, ten dollars for every infringing performance."

The author is more concerned in safeguarding his right to the control of his property than in the cashing of a few cents or even a few dollars on the broadcasting of his works. He claims the right of refusing a royalty of any amount at all, if he estimates that the broadcasting of his work in such or such conditions is to be detrimental to his work. Unless Parliament sanctions the principle of expropriation of artistic works, the author is the only competent judge in the matter. In many cases he would be pleased to authorize the broadcasting of his musical compositions without any fee at all, in view of the publicity that such broadcasting, in some instances, might bring to him, provided such broadcasting is properly done. But, under the amendment sug-

gested to your Committee by radio dealers, to the effect of granting them the free and unrestricted use of any copyrighted work, the broadcasters would be at liberty to have a literary, musical or dramatic work executed by incompetent singers or quack artists who would play havoc with the best works and forever entirely pluck their artistic value. Moreover, such legislation would also allow broadcasters to arrange and remodel a work to suit their special purpose, to use a romance to advertise a railroad, to convert an elegy into a fox-trot, as has been done, and why not to help boot-legging operations? Broadcasters would not even be compelled to mention the name of the author, nor to respect any composition. The free use of music involves the free prostitution of every work of art. Such a legislation, as claimed by radio dealers, obviously leads to abuses of all kinds.

For all the above reasons, the authors, composers and music publishers claim the protection of the law for their copyrighted works, in Canada, as they are protected in every other civilized country.

If the radio-broadcasters, in seeking a profit, refuse to ask the authorization of the author, who, in most of the cases, would be willing to give his consent for no pecuniary consideration, they will still be free to use (without the slightest restriction and without paying a cent) the millions of works now pertaining to the public domain where undoubtedly reside the best musical selections of all ages and of all nations—if not the yankee-negro jazz. For every copyrighted work which the law might forbid them to broadcast, the radio fans would always have access to one thousand of uncopyrighted works which they can freely use despite the most drastic legislation.

The radio dealers who appeared before your Committee have altogether failed to show that the copyright law, as it now extends to broadcasting, in England, in France and even in the United States, has so far not barred any broadcasting station from operating or a single individual from buying a radio set and using it at his convenience.

As Mr. E. Blake Robertson has very candidly put it before your Committee on the 17th of March, the printers are first anxious to take care of the authors . . . when their works are winners, but they do not seek legislation which would force them to take care of the author when in his first twenty years he struggles, labours, sweats and starves while endeavouring to finally produce a good work, the first profit of which will under the licensing clause go to the printer. We, Canadian authors, pray that we be not assimilated to incapables, to minors, to Indians—notwithstanding the historical fact that, in Canada, Indian tribes respected literary property and that infringers thereof were put to the tomahawk penalty.

By the Chairman:

Q. Do you suggest that they now use the tomahawk?

Mr. CHEVRIER: There are many Indians now, but there are no more tomahawks.

The WITNESS: We pray that we be permitted to manage our own affairs, not only when they are poor, but as well when they are profitable; and we respectfully submit to your Committee, to Parliament and to the country that the contention of the radio exploiters and of the printers that they should be appointed, under the Copyright Act, the trustees and guardians of the Canadian authors, is altogether illegal and immoral.

Authors do not ask to be allowed to expropriate the property of the printers, of the radio men, of the manufacturers, of the typesetters or of the pulp-makers. They claim the right to control their own undeniable property, under a just Canadian legislation, under the Revised Convention of Berne, under British fair play—and that is all.

[Mr. L. de Montigny.]

I would add a postscript suggesting an amendment to the licensing clause. Mr. E. Blake Robertson, on behalf of the printers, questioned on the 17th of March, the statement I made here on the 13th of March, concerning the operation of the licensing clauses of our Copyright Act, when I claimed that these clauses would prevent me from importing into Canada the edition of a book which I may have elected to print in England or in France. We, authors, have not the slightest doubt that the granting of a license would permit a printer to exclusively control the sale of my book in Canada for a term of five years and also forbid the importation of my personal edition printed outside of Canada. But some members of your Committee believe that these licensing clauses have not that drastic effect. As they realize that it would be most unjust to so debar a Canadian author from printing his book where he could secure the best facilities, and at the same time deny him the right to import such book or his into Canada, I respectfully submit to the fairness of your Committee an amendment for the purpose of making the situation clear, which amendment would free the Canadian author from the monopoly of printers. The amendment is as follows:

Add, immediately after Section 27 (3) of Copyright Act 1921, the following words:

“Provided that the granting of a license under Sections 13, 14 or 15 of this Act shall in no way impair or affect the exclusive right of the author of such a licensed book so to import and sell such book in Canada”.

The above amendment is suggested only in case your Committee should refrain from recommending the adoption of clause 5 of Mr. Chevrier's Bill No. 2, which asks for the repeal of the licensing provisions of our Copyright Act.

By the Chairman:

Q. In the importation of that book, he would have to pay the ordinary customs' duty?—A. Of course.

By Mr. Hocken:

Q. You are deeply interested in this bill?—A. Very much, Mr. Hocken.

Q. Why?—A. Because I am an author; because I am a councillor of the Canadian Authors' Association.

Q. Is that the only reason?—A. No, no, I am going to give them all. First, I am an author; secondly I am on the Council of the Canadian Authors' Association to which I was appointed two or three years ago. I have always been interested in this matter. I have produced material to fill about twenty or twenty-five books, and I have realized that we have no chance to make any money out of it, so I have spent the best part of my leisure trying to open up a decent career for any writer in Canada. I am connected with many societies in the United States, in England, in France and in Switzerland which try to help us along and to indicate to us the right way to open up a career for authors. That is why I happen to represent many of those societies. I have been the Canadian correspondent for them for many years.

Q. Did you draft this bill?—A. No sir.

Q. Did you assist in drafting it?—A. The Canadian Authors' Association appointed a special committee called the copyright committee, of which I am a member. There are six or seven in this committee. This committee previous to the passing of this present Act prepared a printed report which was presented to the Hon. Mr. Robb who, as Minister of Trade and Commerce at that time, had charge of the Copyright branch. We waited upon the Minister and asked him to include our recommendations in the Act. He referred us to Mr. Ritchie who was then the draftsman of the bill. Mr. Ritchie said: “Gentle-

[Mr. L. de Montigny.]

men, the first thing for you to secure is that our country be included in the Revised Berne Convention; that is the principle first to be adopted by Parliament; withhold your amendments and come back after the principle has been adopted." So, we were not allowed to put one word of our recommendations in the bill of 1921. After 1921 we came back with a further report, a supplementary report, asking something more. As you remember, the Act of 1921 provided for the licensing of authors, and Parliament was forbidden to do so by the British authorities. The International Bureau of Berne said: "You cannot do so." Our Canadian officials paid no attention to the recommendations of the International Bureau. Thereupon the British authorities sent a despatch to our Government saying, "You cannot do this." Then came the Bill of 1923, withdrawing all unionist authors from the operation of the Act and placing a burden on the neck of Canadian authors. We came again before the Minister and Mr. Ritchie, asking for amendments. Mr. Ritchie said: "Do not ask anything, because we are going to repeal these nasty licensing clauses." Not a word of our recommendations was put into the Act, that is the Act in force now, the Act of 1921 amended by the Act of 1923. In this Act not a word of the recommendations by the authors was inserted. You ask me if I drafted the present bill. The Committee of the Authors' Association prepared a printed report and most of the amendments in the Chevrier Bill are taken from reports of the copyright committee of the Canadian Authors' Association.

Q. You have taken recommendations from them and put them in the Chevrier Bill?—A. The Association of authors did.

Q. You represent the authors?—A. I am a councillor of the Canadian Authors' Association, one of them. Mr. Burpee, Mr. Gibbon and Mr. Leacock and others are also councillors. They delegated us to express their views because we have made a special study of the Canadian Copyright Act.

Q. You told us that you were the representative of a number of foreign publishers?—A. Correspondent, please.

Q. Not a representative?—A. In my statement I said Canadian correspondent.

Q. Are you a legal representative?—A. In some cases, yes.

Q. Have you an agreement with them?—A. In some cases, yes.

Q. What is the nature of that agreement?—A. I can show it to you if you want to see it. I have not it here, but I will bring it to you if you like. I can bring it before the Committee.

Q. Does it provide remuneration for you?—A. Sometimes.

Mr. HEALY: I hope so.

By Mr. Hocken:

Q. In what way? Do you collect their royalties?—A. If there is anything to collect. Supposing a music publisher of London, England, has nobody here to look after his business, he says: "You will look after it, and if you see any infringement, advise me of it or tell my lawyers." They have lawyers here in some cases. He says: "If you see any infringement of our copyright, we will give you a commission." It is not fixed. As a matter of fact, I have not received a nickel, I am sorry to say from the music publishers' association of London, England.

Q. Have you formed any organization in Canada to collect these royalties?—A. Not yet; we intend to form something like the Performing Right Society of London, something on the basis of the English society and the American Society.

Q. You are going to form an organization?—A. Yes, we intend to, some day, when we will be permitted, to prevent infringements.

Q. You will have branches all over the country?—A. May be; nothing is decided.

[Mr. L. de Montigny.]

Q. Have you got any now?—A. No, sir.

Q. Have you got any agents?—A. If you call them agents. 'We have got correspondents—personal correspondents—because the authors are spread all over the country; we have branches of the Canadian Authors' Association.

Q. Which would perform the same functions locally that you do nationally?—A. Nothing is settled yet. We cannot say what will happen to-morrow; we cannot say what will happen in the future, supposing the law suppressed everything. We claim that under the Act as it is now we have not the same recourses as we had before under the former Act. For instance, we have no minimum damages at all. Suppose I make a wonderful painting and Mr. X or Mr. Z makes a copy of it, and puts my name on it, but spoils the whole thing. I come before a judge and there is no minimum damages specified. It all depends on the appreciation of the judge. A judge might say it is not worth a cent, another one might say it is worth a million, so we have no minimum damages. In the former Act, Section 37 of Chapter 70, of the Statutes of 1906, there was provision made for minimum damages in every case. Nothing of the kind here. It is repealed. We tried to get minimum damages under the British statutes, and we succeeded, but we have no minimum damages here, and after paying the costs of a trial we would not get two cents.

Q. What do you propose to call your new organization?—A. I don't know.

Mr. CHEVRIER: Why not wait until the child is born to see whether to give it a masculine or feminine name?

Mr. LEWIS: Would the name make any difference?

By Mr. Hocken:

Q. What do you propose to call it?—A. I don't know.

Q. Have you any idea?—A. We have a name, but it is not a corporation or anything like that.

Q. What is it?—A. A Copyright Protection Society.

Q. You are the general manager?—A. No, I would not say that; I am not a manager at all.

Q. What are you?—A. I am the Copyright Protection Society.

Q. You are the society?—A. Yes.

Q. And your offices are where?—A. We have none.

Q. No offices?—A. No offices.

Q. No office in Montreal?—A. No.

Q. Are you acting as the chief agent?—A. I beg your pardon?

Q. Is your title that of chief agent?—A. You called me the general manager, now you call me the chief agent. You can call me anything you like; I am the society; that is all.

Q. You are the society?—A. Yes.

Q. And the office is in your house?—A. Yes.

Q. And you are forming that society for the collection of royalties?—A. No, sir.

Q. For what purpose?

Mr. CHEVRIER: I think the witness does not understand your question, Mr. Hocken. He said he had not formed a society.

Mr. HEALY: Mr. Hocken is forming it now.

By Mr. Hocken:

Q. Have you issued any literature for your society?—A. I don't think so; no; I have not.

By the Chairman:

Q. You have not issued any prospectus or literature of that kind?—A. No, no.

[Mr. L. de Montigny.]

By Mr. Healy:

Q. Have you any money in the bank?

Mr. CHEVRIER: Does Mr. Hocken want to buy shares in this society?

Mr. HOCKEN: If they are profitable, no doubt I will.

By Mr. Hocken:

Q. You have not done any printing?—A. Printing? Oh, yes. I am sorry I misunderstood you. I thought by "literature" you meant circulars, prospectus, and letters of some kind. I did not think that letterheads would include what you call "literature." I apologize for not understanding the meaning of your question. We have some printing, of course.

Q. Then you have an interest in the bill apart altogether from that of the author?—A. Of course, I have an interest in the bill, as all societies have. My first interest is because I am an author and am interested in this from the very first word to the very last word to the advantage of the Canadian authors.

Q. And then you get into the commercial side of it?—A. I am interested in the commercial side as well as in any other side of it.

Q. An organization with branches in Halifax, Montreal, Toronto, Winnipeg and Vancouver is somewhat extensive, is it not?

Mr. CHEVRIER: I think I know what you mean, Mr. Hocken. I had a paper—I do not know whether I have it now—

By Mr. Chevrier:

Q. You are referring to your own paper where you are writing officially?—A. Yes. I have not got a copy of it here.

By Mr. Hocken:

Q. Then you have an official letterhead printed?—A. If you call it official. I have got some paper with the name "Copyright Protection Society" on it.

Q. Giving the location of the branches?—A. Yes. I show an agent in Halifax—by the way, I have a brother-in-law in Halifax, Mr. Gaboury, who happens to be the French Consul, or agent. I wrote him and asked him to let me know if anything happened in Halifax in regard to copyrights, and so I put his name on the paper. I have not written a letter to Mr. Gaboury for many years about the copyright question.

The CHAIRMAN: Are there any other questions, gentlemen?

By Mr. Chevrier:

Q. Mr. de Montigny, how long have you been actively connected with this work?—A. Almost all the time for over 25 years.

Q. Are you under retainer from any society?—A. Not a cent.

Q. How long have you been connected with it? 10 years, 15 years or 20 years?—A. I started many years ago when different societies asked me for information.

Q. Is it right to say then that within the last fifteen years or so you have been actively engaged in this kind of work?—A. The last 15 years?

Q. Yes, or 10 years?—A. In copyright legislation?

Q. Yes?—A. Over that; 25 years.

Q. And in those 25 years, how much money have you got out of it?—A. I cannot say. Not because I am afraid to say, but if I paid my stamps on the letters I could swear that I did not get much. I never made up an account.

Q. You never earned your living by it?—A. No.

Mr. HEALY: He thinks he did not get enough, whatever he got.

[Mr. L. de Montigny.]

By Mr. Chevrier:

Q. Let us go back to a certain case which was brought before the tribunals in Montreal. There is a case reported in 15, King's Bench, 1906, entitled Joubert v. Méré. Are you aware of that case?—A. Yes.

Q. What do you know about it?—A. I made it myself.

Q. Will you explain how you made that case?—A. That case, if I remember well, was in 1906, was it not?

Q. Yes?—A. Previous to that time most of the newspapers and theatres were exploiting literary and musical works without giving the names of the authors or paying them any royalties, and the authors had no opportunity of making a cent, because everything was pirated. At that time I was mostly interested in the province of Quebec, and in that province, and especially in Montreal, everything was pirated. We were making literature in an amateur way, and we studied the law and found that there was an international convention protecting the authors who were being the most pirated, so we decided to make a test case. I came to an understanding with a very well known French novelist, Jules Méré, and asked him if he would allow me to print one of his novels in order to make a test case, and let the matter go before the Canadian courts to decide the issue, not on a side issue, but to decide the whole issue. So I printed an infringed copy of a French novel, and the author sued me on account of this, under the convention of Berne, in order to get it decided whether or not the international convention of Berne was actually protecting the authors of Canada who had not printed their books in Canada. I was condemned by Mr. Justice Fortin in the beginning of 1906. I appealed the decision, and my condemnation was unanimously affirmed by the appeal court.

Q. What did that cost you?—A. Some \$600.

Q. Have you got anything back from that?—A. Not a cent.

Q. You paid it all yourself?—A. Yes.

Q. Just for the fun of having this decision?—A. Not for the fun, but for the sake of it.

Q. Is this the case I now show you?—A. This is the judgment of the Appeal Court.

Q. What was decided there?—A. It was decided there;

"It is clear to this court that a copyright obtained by a unionist in his own country, if it is part of the convention of Berne, protects him throughout the British Empire without the formality of publication."

Q. That is the convention of Berne—A. Of 1886.

Q. So then, any author in Canada—A. It is to prevent any foreign author not getting protection in Canada when his book is not printed here.

Q. And in order to get that decision you paid the costs of a case?—A. It was a test case. Of course, I made it for the advantage of the Canadian authors, because I was an author myself.

By Mr. Hocken:

Q. What have you written?—A. Some novels, criticisms on philological questions, many poems, I am sorry to say, and I am now writing a literary criticism.

Q. That is quite a range of works?—A. Yes.

By Mr. Chevrier:

Q. Do you remember the case of Geracimo, in Montreal?—A. That is about on the same lines.

Q. You started that?—A. Yes. Well, as a matter of fact, I cannot swear that I started this case, because my father-in-law was taking much interest in

this and he took it upon himself to start this other case, which is quite similar to the first one.

Q. And I see there were \$817 damages, with interest and costs awarded. Did you get those damages?—A. Not a cent.

Q. Who paid the costs that were incurred?—A. We did.

By Mr. Irvine:

Q. "We did"?—A. Yes.

By Mr. Chevrier:

Q. Who is "we"?—A. My father-in-law and myself.

Q. Were you in any way ever recouped of these costs by those whom you represented?—A. No, sir.

Q. Now let us get back to that decision of Hubert vs Méré. The decision was that the convention of Berne was in existence in Canada from 1886—at all events in 1906—when you made the test case?—A. Yes, sir.

Q. You heard Mr. Robertson's evidence the other day?—A. Yes, sir.

Q. That it was by virtue of the Canadian statute of 1875 that protection was granted to Canadian authors in Canada?—A. Yes.

Q. And Mr. Robertson added, "1842, when the convention of Berne"—Were not the unionist plays or unionist literary works also then protected in Canada?—A. They were from 1886.

Q. Therefore the operation of the convention of Berne extended protection in Canada to unionist authors?—A. Under the British statute.

Q. And also the convention of Berne which came in 1886?—A. Yes. The British statute called 49-50 Vic. Chap. 33, extended to Canada the effect of the international convention of Berne. That is the judgement of the test case in Montreal; it was a judgment by the superior court and confirmed by the court of appeal. That was the case of Hubert vs. Méré.

Mr. CHEVRIER: Now, is it not so that the convention of 1886 was brought into effect in Canada by the Imperial statute? Is that not right? It was put into force in Canada by virtue of the Imperial Statute?

The CHAIRMAN: Is that question addressed to the witness?

Mr. CHEVRIER: No, to Mr. Robertson.

The CHAIRMAN: Let us finish with the witness first.

Mr. CHEVRIER: All right. Mr. Robertson cannot make the law anyway.

Mr. ROBERTSON: No, but I can interpret it.

The WITNESS: Do you want me to read the judgment?

Mr. CHEVRIER: No, it is there, and we can all read it.

By Mr. Chevrier:

Q. You said something about the Governor in Council fixing the royalty?—A. I don't think so.

Q. Did you not say something to that effect?—A. I said that I, for one, would be glad to have the rate fixed by law, in order to reassure the public who claim that the authors are too exacting in their rights. I think the government could determine the rates on all kinds of radio broadcasting, as is done in the case of phonograph records, so that the public may see it, and the authors will know where they are at. The only thing we are anxious to get is recognition of our right of property, if only to be able to say, "This property is ours." That is the principle involved in this issue.

By Mr. Lewis:

Q. If this bill goes through,—we have heard it said that we want to protect Canadian authors and also protect the authors of the societies you represent.—

[Mr. L. de Montigny.]

A. Mr. Lewis, we intend to protect all the Unionist authors because, of course, this legislation was asked for by the Canadian authors for their protection and it will extend to unionist authors. The reason is that when we will get an open career in which we could make something out of it, if anybody produces a good work this work will be circulated and reproduced everywhere. The production of a literary work is not like the production of a pair of boots which is used only in a restricted area. A literary work goes to all corners of the world and we expect to get some protection in all countries of the world, the same as the protection we are trying to secure for all the unionist authors. It is a question of reciprocity. It is made for the purpose of affording to the authors of one country the same protection in the other countries.

Q. It was stated by a former witness that only about five per cent of the Canadian authors were found upon the average programme of the broadcasting stations in Canada?—A. I understand that Mr. Cartier said 30 per cent, or one third of it, was composed of Canadian authors, who are anxious to give their works free for broadcasting.

Q. To what extent would the authors dominate the programme if the unionist authors came in?—A. If the broadcaster will pick up the Canadian authors instead of the unionist,—but we cannot say what he will do; it is up to him, if he desires, to get only French works, only Italian works, only German works, only Canadian works, or only English works.

Q. Practically the whole programme, then, would come under that ban at the present day?—A. Oh no, because he says he uses 30 per cent of copyrighted works. That means that the rest, 70 per cent, is uncopyrighted works, which he could play and reproduce without being interfered with in any way. That is the public domain, where all the best music is, namely, Bach, Schumann, Wagner, Mozart, Gounod, Bizet, Beethoven, and others. He could take American stuff which is not copyrighted here and fill programme after programme without touching one copyrighted work.

Q. Do you consider that the passing of this Act would seriously handicap the Canadian radio broadcasters?—A. Not at all.

By Mr. Chevrier:

Q. In the first place Mr. de Montigny, it would not affect the amateur stations?—A. That is provided for.

Q. In the second place it would only affect the stations operating for profit, where they could then have the opportunity of making a bargain with the owner of the copyright?—A. Every time.

Q. And most of the time the copyright owner would probably be satisfied to let his musical work be played for nothing, if it would be sung or played properly?—A. I would be delighted to have my song broadcasted for nothing, so long as the artist was a good man.

Q. In the next case, out of the 30 per cent there may be 15 per cent who would be happy to have their work broadcasted for nothing; the other 15 per cent might be those who would be satisfied to take a very minimum royalty.—A. I think so.

Q. And even at that, your society is prepared to accept a very small royalty?—A. You can judge yourself by the minimum damages the Association of Canadian Authors has suggested in the bill; that shows you what we intend to get, a minimum of one dollar.

Q. So that out of the names of one hundred composers, say, making up a musical programme, there might be only ten or fifteen who would exact royalties of a very minimum amount, a very small amount?—A. It looks like it.

Mr. LEWIS: This does not seem to me to be a fair cross-examination, Mr. Chairman. I waited patiently till Mr. Chevrier had finished and closed his book before beginning.

[Mr. L. de Montigny.]

Mr. CHEVRIER: If my learned friend is going to examine, surely because I close my book it is no reason why I should close my mouth.

By Mr. Lewis:

Q. Mr. de Montigny, would you consider that as a result of this bill we would be Americanizing the Canadian public more than is done at the present time?—A. I have explained that in my memo. There is no danger whatever in that, because in the United States to-day the musical works are just as well copyrighted as they are in Canada, and a broadcasting station is no more allowed to broadcast a copyrighted work from the United States than we are here. The situation is absolutely similar.

Q. But the matter is *sub-judice* at the present time there?—A. As it is here. That is why Americans want to secure legislation from our Parliament.

Q. Would you be willing to permit free air performances until the U.S. adheres to the Berne convention?—A. Not at all; that is covered already. There are four plain reasons to prove that there is no free music in the United States. First, the copyright law of the United States provides for that, and I can show that right away. Second, the jurisprudence in the American Courts confirms that Act. Third, they have a society already getting royalties from broadcasting under the law, and the fourth and best reason is because the radio dealers have been before Congress for two years spending money and trying with all possible force to secure free music. If they are so keen in securing free music it is because they have not got it.

Q. You do not agree with the other witnesses that radio is practically free in the United States?—A. Not at all, and I gave you four reasons. There is a copyright law there, and it is not free any more than it is here.

By Mr. Hocken:

Q. Under present legislation, the Criminal Code and this Act, is not broadcasting an infringement of a copyright?—A. Yes, sir.

Q. What more do you want?

Mr. CHEVRIER: It all depends.

The WITNESS: To put that in the copyright law, so interested people will know what pertains to copyright.

By Mr. Hocken:

Q. If broadcasting is an infringement—

Mr. CHEVRIER: Under the copyright law as it stands, when broadcasted, but if broadcasting is done for a profit, it is an infringement under the Criminal Code.

Mr. HOEY: All this was under the legislation we have now.

Mr. CHEVRIER: Under the Copyright Law as it stands, when broadcasted for profit it is an infringement, and there is nothing else said. I come out of graciousness and say that under the Criminal Code, for profit it is an infringement, for no profit it is not an infringement. Under the law to-day, the Copyright Act, for profit or not for profit, it is an infringement. I come and I offer to take out from under the operation of the Copyright Act the application of the law when it affects an amateur and you do not want it. I am trying to put you under the copyright law in the same state that you are in the Criminal Code, namely, under the Code, no profit no royalty, profit, royalty. Under the Copyright Act a performance of any kind is an infringement. Now, I am trying to bring you under the Copyright Act, so that when you are

[Mr. L. de Montigny.]

operating an amateur station without profit, there is no royalty. I have been trying to drive that into this Committee and into the city and everybody else for the last three weeks and I cannot do it.

The WITNESS: We are not so much concerned with covering the amateur, if you don't want the amendment; but what we are concerned with is to prevent radio dealers getting free use of our works.

By Mr. Hocken:

Q. Is "La Presse" an amateur station?

Mr. CHEVRIER: So Mr. Cartier says.

By Mr. Hoey:

Q. Under the copyright legislation of the United States, is the royalty paid?—A. Yes, on copyrighted works. All the information I had I put in my statement.

Q. Do you know what the percentage is?—A. The only thing I know is that the question has been raised by that letter of Mr. Astor's in the Ottawa Journal, saying that the American Society of Authors had demanded \$5,000 a year for the privilege of broadcasting their works. I wrote to the society asking about it, and they sent me that telegram denying the fact, and they say they are sending information which I will lay before the Committee.

By Mr. Hocken:

Q. Have you had any complaints from music writers about the losses due to this present Act?—A. No, Mr. Hocken. I could further say that you just read in the paper yesterday the report of a concert given by some English singer two or three days ago. Most of the songs he sang were copyrighted works and the authors did not care about the royalties on them, as it would only amount to about a few cents each. As a matter of law they could have gone to the man and said, "You must pay me two or three cents on this." There is no doubt that they could claim something, but it would be ridiculous to try to collect two or three dollars, so they did not do a thing. In broadcasting as well, of copyrighted works in a theatre or anywhere else, you cannot quote one case where an author or composer has attempted to collect the little petty sum to which he was entitled.

Q. This goes to the point we raised in the beginning. We are amending an Act under which nobody has as yet suffered; there are no complaints of publishers or composers, and no writer of a book has suffered financial loss because of these licensing clauses.—A. I did, because I was obliged to print my book here at a cost of \$900 when otherwise I would have been able to publish it in France at a cost of \$200. I was liable to be licensed if I had published in France.

Q. Licensed for a book that had a circulation of 900?—A. 3,000.

Q. I thought you said 900?—A. I paid \$900 for it in Canada.

Q. You regard that was a hardship, that an author should have to print his book in Canada?—A. Yes.

Q. He ought to have the right to print it in Czecho-Slovakia or any place?—A. Any place where the printers are reasonable.

Q. That is protection for the author, but nobody else?—A. For the authors.

Mr. CHEVRIER: May I ask Mr. Hocken if he is satisfied to let the present state of things continue, namely that under the Code we have to pay a royalty where the performance is for profit, and if there is no profit, there is no royalty, so that I may sue him under the copyright law whether he makes a profit or

not. Now I have you tight. Under the Copyright Act whether you make a profit or not I have you. Now we propose that where you get a profit you pay, but where you do not we leave you alone.

Mr. HOCKEN: We have an Act here which was very carefully framed—.

Mr. CHEVRIER: Will Mr. Hocken say he refuses to answer?

By Mr. Healy:

Q. I would like to ask this witness a question—.

Mr. HOCKEN: I submit that the Act ought to have a fair trial for four or five years before we begin to amend it.

By Mr. Irvine:

Q. I would like to ask this witness, Mr. Chairman, if under the present Copyright Act, he says that the author of a song could claim a royalty? From whom could the author collect it, in the case of a song having been sung at a broadcasting station? Would you collect it from the artist singing the song or from the broadcasting operator?—A. The way I see it, from the exploiter, the party who derives a profit from it.

Q. Then perhaps both; the artist might be paid for singing it.—A. Perhaps both; supposing we collect five cents, they would probably divide it.

Q. Whom would you sue if you wanted to take action under this Act?—A. The Act says, "Any person," I think. Both of them, unless they made an agreement.

Q. Then this would be an Act in favour of one artist against another?—A. In the United States and in Europe nothing is sung before making a contract and an agreement between the management of the theatre and the owner of the copyright. Everything is settled in advance.

Q. By the theatre manager?—A. By the theatre manager.

Q. And the artist is free?—A. The artists are paid to sing. That is the way it is practised to-day.

By Mr. Lewis:

Q. Would you agree to the charges of the author being regulated, in regard to their royalties?—A. I for one, speaking personally—because we have not discussed this—would be delighted, provided that these regulations are made by the Minister after consulting not only the dealers but the authors, too. In the way the law has been made, the law as it is now, has been in favour of the manufacturer and the printer. I realize that I am speaking under oath.

Q. Do you consider that radio broadcasting at the present time is detrimental to the author as a result of limiting public performances, that it is detrimental to public performances in theatres?—A. If it is unrestricted, certainly; it is ruinous.

Q. And might ultimately replace public performances?—A. It is bound to; it is coming to that. In Paris, they have a new device called a theatre-phone, which not only broadcasts but at the same time gives you a visual representation of the play, so you have both the music and the show. It is bound to replace everything.

Q. And if that stage were ultimately reached, the author would have no royalty?—A. That is why we want our case covered by the law; it is because of that we wish to stop the unrestricted use of music. I do not care so much about the word "free" but I do care about the word "unrestricted" because in that case I could take a piece of music or a play, leave on the name of the author, and publish everything else in it, if I were not limited or restricted. You can see perfectly that if it is not restricted it may mean anything at all.

[Mr. L. de Montigny.]

Q. Do you agree with the former witness, Judge Constantineau, that the radio receiver himself should pay for the public performance that he receives?—A. As a matter of principle, certainly he should pay something for the enjoyment he has of the music, but I do not think it is important at all. If they want copyrighted works, the broadcasting stations should pay for them. It may amount to one, two or three copyrighted numbers in a programme of 20 or 25 pieces.

By Mr. Hoey:

Q. As a matter of fact, do not the receiving stations pay licenses now?—A. I understand that they pay one dollar a year to the Government. I understand that in Australia the people having sets pay one dollar a year or something half of which is put in a fund to be distributed to copyright owners of the pieces broadcasted, and the other half goes to the Government.

Q. They pay a license fee in Manitoba?—A. They pay to the Federal Government.

The CHAIRMAN: I think one dollar a year is the usual radio license.

By Mr. Rinfret:

Q. Mr. de Montigny, there is an impression in some parts that these radio clauses are asking for something that does not exist in other countries. I would like to put a couple of questions to you on that point. What is the situation in the United States?—A. I have explained that very thoroughly, in the statement I made here, pointing out the law.

Q. I just want to have that evidence compact on this particular point.—A. Under the copyright law of the United States as it actually stands to-day, any American or foreign author is able to get his work copyrighted under the laws of the United States, and when the work is copyrighted no broadcasting station could freely and unrestrictedly broadcast it.

Q. There have been cases about that?—A. There have been cases about that.

Q. I think they have been cited previously.—A. Yes, there is only one adverse decision, which is now being appealed.

Q. Do you know the situation in France?—A. I have explained that, too. The copyright situation is so terribly complicated and involves so many interests and industries that the 'Droit d'Auteur' is already studying the situation.

Q. I understand that situation obtains in England also?—A. Yes.

Q. Are you aware of what took place in Germany only a few weeks ago. A famous writer there named Gerhart Hauptmann sued a radio company who had been using his works without his permission and the court decided that the company should pay damages to this author. Are you aware of that case?—A. No, I am not.

Q. You did not read it. I have before me another case of a well-known librettist—his name is Hugo Von Hofmannsthal, who also sued the same company for broadcasting selections from his writings, and won his case. Were you aware of that?—A. No, I was not.

Q. Would you be of the opinion that all these unionist countries should have similar legislation?—A. I should think so. The main desire of the Association of Canadian Authors is to have Parliament pass a Copyright Act saying that the British Copyright Act of 1911 applies to Canada, and that would finish it. It would only take two lines to do that.

Q. That is where I wish to arrive. You are aware that in the United States, France and England there is protection against broadcasting, and your impression is that the same protection should obtain in other unionist countries?—A. Yes.

[Mr. L. de Montigny.]

By Mr. Hocken:

Q. What has an author got to do to get his copyright in the United States?—A. Comply with the law of the United States.

Q. Quite so; what is the law? Give us a brief explanation?—A. I can quote from the Act. The Act starts:—

“That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right.

“(a) To print, reprint, publish, copy, and vend the copyrighted work.”

Then I turn to paragraph (e) of section 1 which provides for the performance of a musical composition and to section 8, subsection (b) which refers to international agreements. I would next refer you to section 28 which deals with the penalty for wilful infringement for profit, also to the presidential proclamations issued in the United States granting copyright protection to works of authors who are citizens or subjects of other countries. There are agreements between the United States and Belgium, France, Great Britain, Germany, Italy, Denmark, Portugal, Spain, Mexico and so on.

Q. Perhaps I may put it this way: If the author of a book or of anything else wants to get copyright in the United States, he has to make the book in the United States?—A. Only if it is written in English, as I understand it.

Q. If a Canadian author wants to get copyright in the United States, he must make his book in the United States?—A. If it is an English written book.

Q. In the English language?—A. I think so.

Q. Would it not be a good thing to have reciprocity in that particular in Canada?—A. You are referring to the manufacturing clause?

Q. Yes.—A. No, sir.

Q. You say that would not be a good thing?—A. Certainly not.

Q. It is a good thing in the United States for the Canadian author?—A. To protect the typesetters.

Q. The Canadian authors are quite satisfied with the manufacturing clauses in the United States?—A. Not at all; they are kicking against it always. American authors have a bill now before Congress to get the United States to join the convention of Berne.

Q. Would it not be a good thing to have a similar law in Canada in that regard?—A. It would be a very retrograde movement. It would put us under the United States laws instead of under the laws of Great Britain.

Q. Would it not put the American author in the same position in this country that the Canadian author is in in the United States?—A. They are already.

Q. They are not?—A. They are here under the licensing system.

Q. That is why we want the licensing system, but the licensing system does not go nearly as far as the American Act?—A. Certainly it does.

Q. The licensing clause does not require a book to be made in Canada?—A. I do not get your point.

Q. It requires it to be printed, but the plates can be sent in?—A. The American law says it has to be “thoroughly made,” type-set and everything. That is logical. But in Canada, it is not logical. As long as there are only three printers, they could take advantage of this clause. This licensing clause has been put in at the request of Mr. Dan Rose in order to protect Mr. Dan Rose and two or three other printers of that sort. A book would be printed legally in Canada with plates made in Germany or in any other country.

Q. Do you know why the United States put that in the Act?—A. At the request of their typographical societies.

Q. It was to protect the interests of the working people over there?—A. Of course.

Q. And we are not to have a reciprocal clause?—A. No. Reciprocity is workable in some fields, but not in everything.

Q. You do not believe in reciprocity?—A. Of course I do.

Mr. IRVINE: May I read a letter I have received from a publisher and ask the witness his opinion of it, because it seems to apply to this Act, though I am not sure under which particular clause it would come in. The letter is from Russell, Lang & Company, Limited, Winnipeg, and reads as follows:—

“I have intended writing you for some time past regarding the present copyright law.

“As it stands now it is apparently placing the bookbuyers and readers of books in Canada into the hands of and at the mercy of the small group of book jobbers and publishers largely centered in Toronto.

“Without printing or manufacturing any books in Canada they may apparently get control of any book, set whatever price they like on it and compel the Canadian public to pay their price or go without.

“This is why many books retail at from 20 per cent to 40 per cent higher in Canada at the present time.

“For instance, the Labour Publishing Co. of London, England, is publishing many good books in cheap editions. Among them is H. G. Wells’ ‘Short History of the World.’ We could bring this book in, pay the duty and excise tax and retail it here (in paper covers) at 50 cents. A Toronto Publishing House, however, claims exclusive rights for this book in Canada and compels us to buy the U.S.A. printed edition of this work which retails at \$4. This is a real hardship to the working man who wants to buy a copy of this work.

“We could tell you of scores of instances where the Canadian public must pay \$2.50 or over ten shillings for books which retail in England at seven and six. U.S.A. publishers are keen buyers and when they go to England to buy the American rights for the books they are after, in many cases they insist the Canadian market being included in the bargain. This is why the Canadian bookstores to-day are flooded with books by British authors but bearing the U.S.A. imprints. The prices of books are generally higher in the U.S. than in England, consequently Canadians under the present copyright law are apparently compelled to buy these higher priced U.S.A. editions whether they like it or not. We ask:

“1st. Why the framers of the copyright law place the Canadian people at the mercy of any set of jobbers or importers? (Middlemen in fact.)

“2nd. Why Canadians are not allowed freely to trade with Great Britain and import British editions of British authors’ books if they so desire to do so?

“The clause in the present copyright law giving the jobbers of books such powers is being taken full advantage of by them and the booksellers are receiving warnings from them that if they import the cheaper British editions such copies will be seized at the Customs, etc.

“As a bookman are you satisfied with the present Act which gives a small group of say a dozen firms such powers?

P.S.—We cannot object to a British publisher (or an American publisher either) selling his books exclusively to any Canadian jobber or importer but what we object to is the Parliament of Canada making it illegal for others to buy the same British books from a British jobber and importing them privately.

“It is not illegal to buy other patent standardized goods such as say ‘Stephens Ink’ ‘Pears Soap’ other than from the Canadian agent

for such lines so why should books be made illegal. It is really a very serious matter for enterprising booksellers when they are forced to buy through a middleman instead of directly from the maker or publisher. Yet the copyright law as it now stands forces the booksellers to buy through middlemen, hence the higher prices."

By Mr. Irvine:

Q. What do you think of that letter? Is that an extravagant statement? Does this come under the licensing clauses?

By the Chairman:

Q. Do you understand it thoroughly?—A. Not very well. I do not see the situation clearly enough to give an expression of opinion.

Mr. RINFRET: Perhaps Mr. Chevrier could explain.

Mr. CHEVRIER: I am not a witness, but the gist of it is that the writer is afraid that if he tries to import that book someone will try to license him. I would suggest that Mr. Irvine submit the letter to Mr. E. Blake Robertson and Mr. de Montigny for their respective opinions.

WITNESS: If you will leave the letter with me, I will endeavour to give my opinion.

Mr. HOCKEN: This refers to a book by Mr. Wells?

WITNESS: An English author.

Mr. HOCKEN: It is copyrighted in the United States and in Canada.

WITNESS: I do not know whether it is copyrighted in the United States.

By Mr. Hocken:

Q. This Canadian publisher who is selling it for \$4 has not taken out a license?—A. They can have no license against Mr. Wells because he is an English author.

The CHAIRMAN: If Mr. Wells were a Canadian author, the printer could take out a license, but he cannot take out a license against him because he is an Englishman.

By Mr. Hocken:

Q. This Canadian importer imports the book from the United States?—A. Yes, that is what they do all along.

Q. He can exclude it from this market—A. Oh, no.

Q. That is what the letter says.—A. It cannot exclude it, because the book is not licensed.

Mr. CHEVRIER: He can import all he wants.

The WITNESS: Yes.

By Mr. Hocken:

Q. This publisher says he cannot?—A. Probably this publisher is under the impression that this book has been licensed. If it were licensed, this English edition would be forbidden to come into Canada, but it is not licensed.

The CHAIRMAN: That is one peculiarity of the law, that the licensing clause does not apply against other than Canadian authors.

The WITNESS: The trouble is this. Many do not interpret the law the same way. In some ways, it is rather confusing, and that is why we seek an amendment to make it clear.

[Mr. L. de Montigny.]

Mr. HOCKEN: If a Canadian author has a copyright and refuses to publish his book in Canada, a license can be taken out by any publisher here and the book published?

The CHAIRMAN: An American author.

Mr. HOCKEN: Yes, the Canadian and American authors.

The WITNESS: It is a question to decide when a Canadian author publishes his work in an unionist country. Under the Berne Convention his work becomes an unionist work and it is a question to know whether this work published in any other unionist country could be licensed in Canada under our Act. I do not know. It is a question to be decided.

Mr. HOCKEN: I do not think there could be any question about it in view of the terms of the protocol.

Mr. HEALY: Does not the copyright owner absolutely own the copyright in England?

Mr. RINFRET: This is pointed out by section 6 of the Act of 1921. A copyright owner can prevent the importation of a work into Canada.

Mr. CHEVRIER: Because he has bought it.

The CHAIRMAN: Have you any further questions to ask this witness?

The witness retired.

The Committee adjourned until Tuesday, March 24, 1925.

WEDNESDAY, March 25, 1925.

The Special Committee appointed to consider Bill No. 2, An Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 11 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, and McKay.

In attendance:—Mr. O'Halloran, Commissioner of Patents.

The CHAIRMAN: There are some communications.

The CLERK: I have a communication addressed to the Chairman from H. Macdonald, legal secretary of the Canadian Manufacturers', Toronto, enclosing a resolution carried unanimously at a special meeting of organizations interested in Bill No. 2, the Copyright Amendment Act, adhering to the principle of the licensing clauses. The meeting was held on 19th March. Mr. Macdonald's letter is dated March 20, 1925, and reads as follows:—

“Toronto, March 20th, 1925.

W. G. Raymond, Esq., M.P.,
Chairman—
Special Copyright Committee,
House of Commons,
Ottawa, Ontario.

Dear Sir.—A special meeting of organizations interested in Bill 2, the Copyright Amendment Act, was held in our offices, here, yesterday afternoon, when the following were present: Douglas Murray, Murray Printing Co. Ltd.; Geo. M. Rose, Hunter Rose Co. Ltd.; F. F. Appleton, The Musson Book Co. Ltd.; D. A. Rose and M. F. Harrison, Canadian Copyright Assoc. of Canada; J. Vernon Mackenzie, MacLean's Magazine.

Mr. Douglas Murray presided.

[Mr. L. de Montigny.]

After full and careful deliberation, the following resolution was carried unanimously:—

‘That this Committee strongly adhere to the principle of the licensing clauses of the Copyright Act, 1921, as applicable to works for which the demand is sufficiently large to make manufacturing in Canada commercially practicable, and pledge their support of any reasonable amendments to secure legal protection of the authors, publishers and others, against infringements and other injustices.’

I am instructed by the Chairman of the meeting to transmit to you a copy of the resolution, for your information.

Yours faithfully,
(Sgd.) H. MACDONALD,
Legal Secretary.”

I have also a communication from His Honour the Speaker, addressed to the Chairman, which says,—

“Please find herewith a letter just received from the Viscount de Fronsac, who wishes to file with your Committee his approval of Bill No. 2, with reference to the Copyright Act.

With kind regards, believe me, dear Sir,

Yours very truly,
(Sgd.) RODOLPHE LEMIEUX.”

The letter is as follows:—

“Right Hon. Speaker of House of Commons,

Sir,—Permit me as an author of historical sciences in books printed, also as an author of songs, and piano-forte pieces composed by me to approve before the House of the Bill No. 2, protecting the few authors who yet remain in Canada, from having their work filched from them by ‘Radio’ and other means, leaving them without pay for their work, to die of starvation,—or else to leave the country—as the major part of them have been forced to do already.

I can understand that reverend, salaried blitherskites are in favour of opposing the bill, because they desire (after receiving their salary of course), to have their words accompanied by ‘hymns of praise,’ ‘broadcasted’ with the eye of an advertiser to secure a more paying position yet by means of the radio publicity—if publicity, so far as an author and composer are concerned, would prevent the publication of their works and deprive them of their sale of those already published.

(Sgd.) VISCOUNT DE FRONSAC,
Halifax, Nova Scotia,
Canada.”

Mr. IRVINE: Are you going to bring him as a witness?

Mr. CHEVRIER: I would be glad to have him, but he is an author, and unless you pay his travelling expenses I do not think I could have him.

The CLERK: I have also communications from John Watters and A. M. Watters of Toronto protesting against the proposed restrictions of broadcasting popular songs. There is also a communication from the Minister of Trade and Commerce dated March 18th, transmitting to the Chairman a file comprising twenty-one communications received from various sources all relating to proposed amendments as set out in Bill No. 2. The matter contained in these communications has reference largely to the question of radio broadcasting of music. I have fourteen of these communications.

Then I have a file here from Mr. Norman Guthrie which he has placed in my custody for reference by members of the Committee. The file comprises fifty-eight communications. I have also a communication from Mr. Gordon V. Thompson, General Manager of the Leo Feist Company.

Mr. CHEVRIER: I have a few letters that I would like to place before the Committee. But I would like to say that if the letters that the Hon. Minister has received with reference to the radio amendments are as intelligent as the one I have in my hand, I do not think they should receive much weight. This letter is from St. Mary's, and if the other letters are not more intelligent than this one, it is to be regretted. Then I have two letters addressed to the Hon. the Prime Minister who has forwarded them to me. One is from London, Ontario, dated March 16th which reads:—

“On behalf of four hundred members of the Canadian Women's Press Club I am asked to protest against the licensing clause of the Canadian Copyright Act and to support any amendments that will modify or cancel these provisions of the Act.

(Sgd.) MAY STUART CLENDENAN,
Corresponding Secretary.”

There is another communication from the Canadian Women's Press Club, Winnipeg, addressed to the Prime Minister, as follows:—

“As secretary of the Winnipeg Branch of the Canadian Women's Press Club I beg to submit the following resolution which was passed at our last weekly meeting, Wednesday, March 11.

‘Resolved that the Winnipeg Branch of the Canadian Women's Press Club support the Canadian Authors' Association in its protest against the licensing clauses and the Copyright Bill.’

(Sgd.) LILLIAN E. SCARTH,
Secretary.”

I may say that if I had wanted to make any demand for such letters I could have received them from all over Canada. There is a cablegram from London, England, addressed to me. The cablegram reads:—

“Music Publishers' Association of Great Britain heartily support Bill No. 2, and trust that Canadian Parliament will pass same into law. It is highly essential in interest of copyright owners that their broadcasting rights are protected.

(Sgd.) DIXIE SECRETARY.”

I will not file the letter from St. Mary's.

Mr. LADNER: There is a letter from the Musical Development Association which touches another point, and I think it should be filed.

The CLERK: We have a copy of that letter.

The CHAIRMAN: Some corrections have been made in the evidence, and are in the hands of the Clerk.

The CLERK: I have received copies of the evidence corrected by the following gentlemen who gave evidence before the Committee:—Mr. Kelly of Toronto, Mr. Burpee, Mr. de Montigny, Mr. E. Blake Robertson and Mr. Appleton. Mr. Appleton's corrections are perhaps the most important. He is here this morning.

Mr. HOCKEN: Will you have the evidence reprinted?

The CLERK: The custom has been to have a revised edition printed towards the close of our inquiry. This revised edition usually goes into the appendix of the Journals and for distribution. In talking over this matter with the Chair-

man, he thought that if it was the Committee's wish that a revised edition be printed, we could proceed to do so, that is, after the evidence is all in.

Mr. CHEVRIER: Do they want to change their evidence?

The CLERK: No, not substantially.

The CHAIRMAN: Not substantially. Except Mr. Appleton's corrections the changes are minor changes.

Mr. LADNER: To change the evidence substantially would be a mistake. I would suggest that the proper procedure to pursue would be to add in the minutes that these corrections were requested and were accordingly placed in the minutes of the proceedings. Our duty is to give exactly what takes place, so far as the record is concerned, and I think that corrections which are not more than those allowed in Hansard should be placed in the minutes in the form of addenda.

The CHAIRMAN: I think that most of the corrections are of the nature you describe, such changes as would be made in the Hansard report, with the exception, of course, of Mr. Appleton's corrections.

Mr. LEWIS: Since Mr. Appleton is here, we might hear what he has to say.

The CHAIRMAN: We will, presently.

GORDON VINCENT THOMPSON called and sworn.

The WITNESS: Mr. Chairman and members of the Copyright Committee—

By Mr. McKay:

Q. Whom do you represent?—A. I was going to state that in my statement. I have read with considerable interest the evidence placed before this Committee in connection with its consideration of Bill No. 2. I was unaware that any copyright legislation was to be brought up at this session and knew nothing of this bill until I arrived in Toronto from a rather extended trip to the western coast. As one of the original agitators for a law that would protect Canadian authors and composers, and one who has had sixteen years' experience in the music publishing business in Canada, and as the writer of over a score of songs (the total sale of which has been over half a million copies in Canada) I felt it my duty to make some representation to this Committee. As first president of the Authors' and Composers' Association I helped frame the original memorandum that was presented to the government in 1919, dealing with the question of adequate protection for Canadian authors and composers. I have followed the copyright question very carefully and watched its development in other countries. I feel that my association with the copyright legislation since 1909 entitles me to a voice that should be heard at this juncture. While I am a member of various authors' associations, trade associations and other organizations interested in copyright, I do not appear before this Committee representing any of these associations. I began publishing music in Canada in 1909 and have continuously developed this business until to-day our organization is the largest in Canada devoted exclusively to music publishing.

At the conclusion of the war I saw how difficult it was to carry on an independent music publishing company in Canada so I arranged to get the publishing agency for Leo. Feist, Inc. of New York City, and for Francis, Day & Hunter of London, England, and more latterly the Century Music Publishing Co. New York. When my company took over these various catalogues it was formed into a limited organization and became known as Leo Feist Limited. Since 1919, this company, employing only Canadians, printing its music on Canadian paper by Canadian printers, has been struggling for the right to

[Mr. Gordon V. Thompson.]

carry on a music publishing concern in this country. I would therefore repeat that my words to-day are only spoken on behalf of Leo Feist, Limited, and express my purely personal views without reflecting in any way any official connection with any of the associations in which I happen to be interested. The remarks and observations that I have to make before this Committee deal chiefly with the mechanical reproduction of music. I shall first address myself to the question of phonograph royalties, and secondly to the question of reproduction of music by radio. During the war, Canadian song writers came into their own. Prior to that, London and New York had been the song centres of the world. On account of the United States not being in the Great War, Canadian writers and publishers received a natural protection that gave them a chance to write and publish songs in Canada. The idea of that is there was a great demand for patriotic songs in Canada when such were not being printed in the United States before they entered the war and that gave a great impetus to the song writers of Canada.

A great many soul-stirring melodies were written by Canadians including Lieutenant Gitz Rice, who wrote "Dear Old Pal of Mine" and "Keep Your Head Down, Fritzie Boy", and Geoffrey O'Hara, who wrote the famous "K-K-K-Katy", Morris Manley, who wrote "Good Luck to the Boys of the Allies", and McNutt and Kelly of St. John, who wrote "We'll Never Let the Old Flag Fall." A number of other writers contributed in no small degree to the morale of the troops and of the folks at home by their creations. They demonstrated to the world that Canadians could write music.

I might say that since then there have been a great many songs written by Canadians, a good many of which we have published ourselves in Toronto, one of which was Captain Plunkett's "Come Back Old Pal" and a great deal of the Dumbell music. The unfortunate part was that during these years when Canadian writers had their chance, the copyright laws of Canada were so antiquated that their works were only partially protected. In 1909 in the United States, and in 1911 in Great Britain, up-to-date copyright laws were passed, which fully protected their writers against any mechanical reproduction of their works without compensation. Owing to the reciprocity controversy, followed by the Great War, Canadian legislation was delayed. During this period, and until January 1st, 1924, manufacturers of phonograph records reproduced the world's music without having to pay one cent of royalty to any copyright owner. A conservative estimate of the royalties thus lost to the writers and copyright owners must be somewhere in the neighbourhood of one million dollars. Owing to reciprocal clauses in foreign copyright laws, especially those of the United States, Canadians were unable to collect any royalties abroad. The American Act states that mechanical royalties will be paid only to the citizens of countries where American writers are given similar recognition. Thus the whole question of copyright is so tangled internationally that it is impossible to protect the nationals of one's own country without at the same time giving protection to foreigners. I read a lot about so many Americans and a percentage of American and British writers. That is, to my mind, beside the point. The point is in order to protect Canadians in foreign countries—for Canadian song writers export their products—we must protect the writers of foreign countries in Canada. In other words, the protection Canadian writers wanted in the United States of America could not be received until Canada had granted equivalent protection to Americans whose works were reproduced in this country. In this connection no blame is placed upon the phonograph companies because they stated they were willing to pay royalties if the law demanded it. Naturally, competition prevented one company paying where another would not. Since the passing of the law, that is, since 1921, our relations with the phonograph companies have been most

friendly. Agreements have been reached and a satisfactory basis of contract has been negotiated with nearly all the companies, and the arrangements between our company and phonograph companies are working quite smoothly, so far as I have been able to learn. I have not had a chance to examine the memorandum presented to this Committee by the phonograph companies, but I have read over Mr. Berliner's evidence before this Committee. Representing as I do probably the largest single interest in phonograph royalties in Canada, there are some points I would like to bring before this Committee before any amendments to the present law are made. The phonograph manufacturers' contention that only 90 per cent of the amount due under the Act should constitute full payment is rather misleading. It is a fact that in the United States the publishers have come into general agreement with the phonograph interests whereby a deduction of 10 per cent may be made from the amount due them as copyright owners under the American copyright law. The underlying reason for this agreement was the fact that royalties are paid in the United States upon the manufacture and not upon the sale. It was pointed out by the manufacturers that there were certain losses in transit, breakages and returns, so that it was hardly fair to expect a full payment of royalty as allowed by the copyright law. A 10 per cent deduction was then agreed to. However, in Canada the situation is different. In Canada the payment is made upon the sale, rather than the manufacture. In other words, the phonograph companies have already deducted for returns, breakages, etc., when they make their royalty remittance. There is no reason why a further 10 per cent deduction should be made. As a matter of business arrangement, however, our own firm decided to grant the 10 per cent deduction in Canada, owing largely to the difficult position in which the record manufacturers found themselves upon the introduction of radio. This was entirely a matter of agreement and is by no means necessary under the law. If the proposed amendments were to go through, the result would be that the American writers would be entitled to only nine-tenths of their royalty in Canada as against ten-tenths in the United States. That is, figuring the royalty on the actual sale of the records.

By Mr. Healy:

Q. Just a minute. Do you mean the amendment proposed in this bill or Mr. Berliner's evidence?—A. Mr. Berliner's evidence, where he proposes to make the 10 per cent legal. Having read Mr. Berliner's evidence, is what prompted me to come down here and reply. In the United States, the composer receives two cents, on every record sold, the 10 per cent deduction being merely the records destroyed or lost or returned. In Canada, a similar deduction would be a net reduction from his royalty. In other words, Canada would be discriminating against the American writer and thus destroying the reciprocal basis now existing between Canada and the United States. In fact, it is doubtful if such a provision would be agreeable to the United States copyright authorities as it would manifestly be unfair treatment of their nationals in Canada. No such arrangement would work out satisfactorily as a matter of law, and therefore we submit that the matter remain as at present, namely, a matter of agreement between the publishing and mechanical interests. Otherwise, it would amount to a 10 per cent reduction in the rate of royalty, which, at the present time, is meagre enough.

Phonograph interests also seek to amend the copyright law so that they may have control of words as well as music. Very likely the meaning intended by the phonograph manufacturer would be quite agreeable, provided the wording of the amendment confined itself to the actual recording of the words by mechanical process. That is for oral, and not for visual reproduction—if I might put it that way. We do, however, object to any wording which would give the right to reprint words on labels, books, catalogues, advertising, or in any other

way interfere with our sole right to print words or music of our songs. This amendment seems quite unnecessary because the law has been functioning in the United States and in England and in Australia and in other countries without such a point developing. In the case of the action brought on behalf of Lieutenant Gitz Rice against the Columbia Company, I believe the judge held that words so closely associated with the music as to be part of the composition were necessarily provided for under the Act as it stands. We see no reason for amending legislation until such time as hardships have developed under the law. I do not know of any instance where separate royalties have been claimed by the writer of words as well as the writer of music. The general custom has been to split the royalty between the two. Let me repeat that we are opposed to any amendment that would allow words or music to be printed on labels, circulars, catalogues or music rolls without our specific permission. This company that I represent has no objection to freeing phonograph companies from paying a double royalty. In other words, we do not expect to collect a royalty in Canada and another one in England or Australia. However, we are wondering what the situation would be provided records were shipped from Canada to the United States, where royalties are imposed on the manufacture and not on the sale. Would Canadian-made records be subject to any royalty in the United States? We would like our interests protected to the extent that if records are shipped to a country where they may be sold without payment of further royalty, then the royalty is payable to us in Canada. In other words, we desire to collect only one royalty but we do want to get that one royalty, whether it is collected in Canada, the United States, Australia or England. In other words, we only want that two cents per record, but we want to make sure we get it. If we ship it to the United States where royalty is collected on manufacture, we should get it in Canada.

By Mr. Hocken:

Q. If you collect your royalties on the sales, how will you work that out?
—A. We leave that to the honesty of the phonograph company. As a rule they pay us on their sales, excepting where a sale is made to a country such as Australia or England, where they have to place a stamp on the record when it gets over there before it is legal to be sold. In such cases our English representative gets the royalty. This matter of phonograph royalties and copyright legislation in general involves so many international reactions that it is necessary to proceed very carefully and as a general principle it is wise to follow the lead of countries that have had more experience in this field than has Canada. Once again, let me say that our relations with the phonograph companies have been most cordial and we feel that when we point out our difficulties they will be more than ready to meet us half way. When I have had a chance to study the memorandum presented by the phonograph companies, I may be able to point out other suggestions of theirs that would react unfairly on the writers and publishers. From reading Mr. Berliner's evidence, however, the three points I have suggested, viz., the 10 per cent reduction in royalties, the possible reprinting of our words, the absolutely free export privileges seem the main features to which we as publishers would object.

The second division of my remarks has to do with the question of broadcasting music by radio. I do not think that there is any fundamental difference between the publication of a work by printing press, gramophone record, moving picture or radio. All of these are simply mechanical contrivances for disseminating ideas. The object of copyright is to give the creator of the work full control over where and when his work shall be given to the public. The copyright law gives the author the protection the tariff gives the manufacturer. It is fundamental to his very existence. Our company takes the view that anything which tends to reduce the remuneration to writers cuts off the incentive to

produce good work. We are quite happy to pay the full royalty due to the writers who work for us. The more money we can remit to them the better satisfied we are. We are dependent upon the writers for hits and want to encourage them in every possible way. As publishers we are quite happy to pay royalties on every sheet of music we sell to the public and we believe that the higher remuneration writers receive for their work and the more thoroughly they are protected by law, the better work will result because of the competition stimulated. As a Canadian interested in the development of Canada, I further believe that eventually the interests of Canada are best served by giving our authors, composers and artists the fullest possible protection and encouragement. Any legislation that tends to curtail their activities is detrimental to the best interests of the country. Canada received more advertising through the fact that a Canadian wrote "In Flanders' Fields" than she did from activities of manufacturers and business men during the war. The nations of antiquity are famous to-day because they produced great thinkers, great writers, great artists. While manufacturing and economic development are extremely important, development of art and literature and music in Canada is equally important.

Approaching the radio situation from this general standpoint, it would appear that the memorandum submitted by the radio interests for absolutely free music is one which would tend to curtail the author's rights. Radio, in essence, is simply a new means of publishing or bringing ideas to the people. Why should radio be treated any different under the copyright law than other institutions such as the press, the stage and the auditorium? All of these come under the control of the copyright law and it is unthinkable that radio should have absolute freedom and be beyond the reach of any law to which the press and the pulpit and the stage must at present conform. If the Parliament of this country has legislated that it is not right to reproduce songs by phonograph records without paying a royalty to the writer or without getting his permission, surely radio must recognize some similar control. If the laws of this country compel newspapers to recognize the author's right as to the reproduction of his work, surely radio must recognize some sort of equivalent limitation. If preachers, playwrights, theatrical producers, artists, architects, builders and scores of others must be controlled by copyright, why should radio ask to be entirely free? The object of the copyright law is to give the writer full control over his work. Under the Canadian law, when you originate a lecture, write a letter, compose a tune or a piece of poetry, you have all the property rights that flow from the creation of such a work. You may withhold it from the phonographs if you wish, you may withhold it from the printing press if you wish. You may withhold it from the production in any theatre if you wish; but radio comes along and says that you must allow it to broadcast your work through the world whether you want it or not. Surely radio seeks an unfair position for itself as compared with the press, pulpit and the stage. Gentlemen, would not such a precedent place too much power in the hands of the few broadcasters operating in Canada were such a precedent to be established? We therefore submit that radio should come under copyright control exactly the same as other avenues of publicity. In this connection we do not need to press for new legislation. We believe the copyright law as it has stood on the Canadian statutes for many years is already sufficient. I might say here we felt all along that the present law covered this point. As we read the law, the radio seemed to come under the public performance clauses which come up all through the Act, and we believed the copyright laws that had stood on the Canadian statutes for many years were already sufficient. The right of public performance has been established for years in Canada and has been re-enforced by an amend-

[Mr. Gordon V. Thompson.]

ment to the Canadian Criminal Code. The right to perform in public is an old old right. Take the case of the Dumbells, for instance. I was just out to Vancouver where they were opening with a new show called, "Oh yes", the music of which we are publishing, music of a light comic nature. Captain Plunkett said, "Don't let the records or the sheet music go on sale ahead of our show". These records and these pieces are now on sale in the west, but he does not want them down here until after his show has been here, because he has a big investment in that show and so have the theatres. It is not right to broadcast these tunes before the boys come down here. They go over to England and over to Europe and around the world trying to get that show together for the next year, and yet when we arrange to publish the music and put the records on sale, if there is not some control over the situation you destroy their investment.

By Mr. Chevrier:

Q. Isn't it the idea that the owner of the copyright should retain control of his work?—A. Yes, certainly. In spite of the fact that publishers, authors and composers have believed all along they were protected in the field of radio, I have not heard of one instance in which this right has been exercised against a broadcasting station. If, as the radio interests allege, the advertising value of the radio is so important to the writers, why do they fear a royalty charge? Surely no writer would want his work withheld from the radio if the broadcasting of his work gives all the advantages the radio interests claim it does.

It is quite true that radio has advertised some songs. It has particularly helped a small publisher to reach people he could never reach before and at a minimum expense. There is no question about the remarkable advertising value of radio.

In the field of music, however, specially light popular music and comic songs, too much advertising may be worse than too little. For instance, if you were to publish a joke book containing original humour, you would expect full protection. Thousands of people might buy your joke book provided they had not heard the jokes before. If I were to broadcast these jokes from station after station and people were to hear them so often that they became tired of them, it would certainly kill the sale of your joke book.

Popular music is simply a recreation, a piece of light entertainment, and is supposed to be served in moderate allotments. An overdose will do more harm than good. Popular songs are simply the seasoning of music. They compare in the field of music with the place of the newspaper and magazine in the field of literature. The press of the country has been very seriously concerned about radio broadcasting of news items because of its effect upon their circulation. Similarly, the publisher of light popular music is concerned about the uncontrolled broadcasting of their products. The news value of a song is very, very important in its marketing. The successful exploitation of a new song is a very intricate and involved undertaking. It must be handled with consummate skill. Otherwise it is quite possible to destroy the property rather than to enhance its value.

While the sale of radio sets has been increasing by millions upon millions, the sale of individual hits and the sale of popular sheet music as represented by the import and export figures has steadily declined. The publishers agree that it is very difficult to get the total sale of copies that was possible during the years before radio was introduced. Phonograph royalties have also declined very seriously. The result is that the position of the writer of songs and his agents, the publisher, is very serious right now. It needs the most careful treatment if their rights are to be preserved.

All we, as Canadian publishers, ask is that we have the right to say whether we want this advertising or not. It may be good advertising for us

[Mr. Gordon V. Thompson.]

to print the full chorus of a song in the newspaper. It may be good advertising to have a song reproduced on a phonograph record. At the same time we have the right to say whether we desire this advertising or not. Neither the phonograph companies nor the newspaper have a right to use our song in this way without our permission. We desire similar control over the broadcasting of our property, and think we are entitled to it.

So far as I have been able to learn, there has been no difficulty in England, Australia and other countries of the Berne convention to compare with the controversy in the United States. We feel there is no need for this controversy to extend to Canada and that it is quite possible to solve the problem in Canada without creating a division between the radio interests and the authors and composers of this country, and of other countries as well.

We believe that the Copyright law should extend full control to radio as it does to other avenues of publicity. We further believe that authors and composers should be recompensed on a fair basis by the government turning over say 10 per cent of the license fees received from broadcasting stations and from receiving stations to some representative society which would make an equitable distribution of the amount received among the authors and composers of the works broadcasted. It is quite possible to work out a satisfactory division on the basis of copyrights registered at Ottawa. Canada has all the machinery now to put this plan into effect and free the broadcasters to use any music not specifically restricted. If the advertising value of the radio is so great, writers will vie with one another to have their works broadcasted, because they will not only get the advertising but they will also receive their share of the license fees. It would then be quite possible for a writer to withhold his work from the radio if he thought such a course desirable. The law of supply and demand would regulate the situation and there would be no dirth of music. Radio would remain under the same control as is exercised over the theatre and press. The only difficulty with regard to radio is the method of remuneration.

My own opinion is that whether or not radio stations are operated for profit they should be under copyright control. Just because a station is operated by the government or by a municipality, there is no reason why it should destroy a writer's property if the writer feels that he does not wish his work broadcasted. After the government has recognized the right of the author and composer and paid him his share of the license fee, then it should be illegal for any author or composer to charge for having his music broadcasted or for the radio to charge for broadcasting that particular music. The deal is made there, and after that it is a question of supply and demand.

By Mr. Ladner:

Q. Would you give your observations of this situation. Supposing a Canadian publishes a very good song, and has copyright privileges here as far as radio is concerned, and he registers it in the United States, and the large radio stations in the United States proceed to broadcast that into Canada. How would you control that, either as controlled in itself, or by way of royalties?—A. Of course, radio presents a little difficulty there, because of not being able to limit the line. That is, anything broadcast in the United States flows over into Canada, and vice versa, anything broadcast in Canada flows over into the United States.

Q. In other words, supposing a publisher having control of that was so tied up by other arrangements that he would do his best to protect the publication of this thing, nevertheless the broadcasting stations of the States could broadcast that all over the United States and into Canada?—A. I do not believe that such a situation exists.

Mr. CHEVRIER: Not if it is copyrighted.

[Mr. Gordon V. Thompson.]

By Mr. Ladner:

Q. Certainly, the United States stations can broadcast without paying anything?—A. I don't agree to that. I believe the American law covers radio just as thoroughly as the Canadian law does.

Q. Do you mean to say that the Copyright law in the United States enables an author to collect royalties?—A. That is a subject of litigation in the United States now.

Q. But what are the business facts; are royalties paid by the broadcasting stations?—A. I believe the majority of the stations in the United States are paying royalties.

Q. The weight of evidence we have had here is that the United States has free broadcasting stations, in fact I have not heard anybody seriously suggest—although some have suggested it—that the broadcasting stations in the United States control the royalties.—A. It would be quite easy to find out that information. In the United States there is no license fee charged for radio receiving sets. There are a great many various broadcasters of all kinds, some of them belonging to radio corporations, some to radio manufacturers, some to newspapers, some to private individuals, some to educational institutions, and others, and the society of authors and composers over there took the position that the only way to control the situation would be to band together and pool their performing rights and deal as one unit with all the broadcasting stations, rather than to deal individually. The result is that they have had a long fight in the courts over this broadcasting situation, and the broadcasters over there feel that it is a hardship to pay these royalties because they are not receiving any fee from the people who are listening in, and that is the crux of the argument. I believe three cases out of four have held that the authors are right in their contention that copyright does control it, and the broadcasters assumed the position that it does not control it, because it is not specifically mentioned.

Q. Supposing a United States broadcasting station—any station—could broadcast without paying any royalties?

Mr. CHEVRIER: They are not doing it.

Mr. HOCKEN: The witness says they are doing it.

By Mr. Ladner:

Q. Supposing that in the United States a broadcasting station paid no royalties and the authors and composers could not oblige them to pay royalties, directly or indirectly. Do you think then that it would be in the public interest, in the interest of the authors, composers and the public generally for Canadian broadcasting stations to be obliged to pay royalties?—A. On my plan I am not exacting royalties from the stations at all; I am asking ten cents on the dollar that the receiver pays each year, that it should go to the writers.

Q. That is for the listener in?—A. Yes.

Q. Apart from that, just addressing your mind to my proposal, what would you say?—A. I do not think if the United States commits a wrong in not recognizing the rights of authors and composers that it is any precedent for Canada to do so, too.

Q. What would be the consequences, as far as broadcasting stations and listeners-in would be concerned?—A. I do not think it would be a very serious practical matter at all.

By Mr. McKay:

Q. How could you collect from a listener-in?—A. The Government receives \$1 a year.

Q. Yes, and they have about ninety thousand licenses, and the cost to the Government amounts to pretty nearly that much.—A. Then I should think

the next move would be to raise the fee. If it is not an adequate fee—I am getting at the principle of right or wrong.

Q. Administration cost takes up the entire fee, nearly. We were told here in this Committee that we have over four hundred thousand receiving sets, I think, and yet down here in the government they have only a record of less than ninety thousand.—A. That may be, but I think if you got the co-operation of the composers and writers and others whose works were copyrighted, they would see that these fees were collected.

Q. What would you suggest as a fee for a receiver?—A. I would not attempt to speak on that point, because that is a matter for the government.

Q. What would you suggest; would \$5 be too much?—A. I really believe that is not a publisher's problem.

Q. You would have to create a fund?—A. Yes. I believe if you got your \$1 fee from all the people in Canada listening in, you would have enough.

Q. The trouble is that if there are only ninety thousand registered here, and there are over four hundred thousand in Canada, there is something wrong.—A. Every writer, speaker, and copyright owner in Canada whose works are being used for broadcasting will have a definite interest in helping the government collect these fees.

Q. How could they do it?—A. They could create public sentiment in their own locality.

By Mr. Ladner:

Q. Mr. Thompson, what would you say to this. Supposing the law was framed so that it was in the power of the Minister to make our law, as far as it affected Canada, the way the law in the United States would affect American citizens?—A. I think the system whereby the listener-in shares some of the payment is the right thing to do.

Q. That is not my point. Radio is such a thing that stations can broadcast all over the world, and the customs officers cannot collect the duties as it passes by. The United States makes a law, let us say, that gives special advantages on the other side. When they broadcast into Canada it puts a handicap on the broadcasting stations here. Let us assume that men in the business all agree to that. Do you think it would be wise to have our law so that we could leave it in the power of the Minister to make it apply in connection with our citizens as the United States law would apply for their citizens? In other words, if they put royalties on in the United States, put them on here; if not there, take them off here.—A. I do not see any reason why we should wait for the leadership of the United States, or wait till the United States moves in the matter.

Q. It is not a question of that; it is a question of business expediency.—A. You are suggesting a situation that does not exist. The United States has not that advantage, and why take a theoretical case when you have practical facts to deal with, as the thing exists to-day.

Q. Is it not a fact that there is a dispute in the United States as to whether the royalties can be charged in United States broadcasting stations?—A. There are three decisions to one, and I would suggest that you read them very carefully and then you would see that the difficulties you have in mind—.

Mr. CHEVRIER: Would you let me put that clear. Under the Copyright law of the United States at present, these songs must be copyrighted to be protected. Once they are protected, royalties are taken. Now then, are they paying any royalties in the United States? Yes. There is no free music in the United States. You have received from the radio broadcasting association, or somebody else, a circular, whether you read it or not I don't know. In it there is this statement:

[Mr. Gordon V. Thompson.]

"This contention ('that broadcasting shall be termed a public performance for private profit') is denied by every other country where the composers and authors have sought to have this interpretation of the Copyright Act legalized."

In other words, in this circular it means that at present there are no royalties collectable under the Copyright law of the United States, and therefore no royalties are being paid. Now then, the American Society of Authors and Composers writes to these people in Toronto as follows:

"Confident that you would not wilfully misrepresent the facts, and sure that you will desire to correctly inform those to whom your letter was sent, we bring it to your attention that your statement as above quoted is directly contrary to the actual facts".

There is no free music.

Mr. LADNER: Do they give the authority on which they base their opinion?

Mr. CHEVRIER: Yes. The Copyright law is here. Now, Mr. de Montigny gave evidence the other day, and on page 161, under oath, he says:

"That is covered already. There are four plain reasons to prove that there is no free music in the United States. First, the Copyright law of the United States provides for that, and I can show that right away. Second, the jurisprudence in the American courts confirms that Act. Third, they have a society already getting royalties from broadcasting under the law, and the fourth and best reason is because the radio dealers have been before Congress for two years spending money and trying with all possible force to secure free music. If they are so keen in securing free music, it is because they have not got it".

There is a bill now before Congress asking for free music, and they cannot get it, and there is also an appeal before the American courts asking for free music. There are two decisions to the effect that music is not free, and one decision deciding that that does not constitute a performance.

Mr. LADNER: What would convince me still more would be the section of the Act, and whether the decisions are by the Supreme Court of the United States, or the State Courts.

Mr. CHEVRIER: They are all State Courts, but one decision is going to appeal. The decisions which said there was no free music in the United States were not appealed from, but the one that decided there was free music is now going to the Supreme Court.

Mr. Hocken:

Q. Are the broadcasters in the United States sending out music without paying royalties?—A. I believe in the United States there are composers not in the society who constantly would like to get their works before the public. They, I believe, in many cases allow broadcasters to broadcast their works indiscriminately. That is the kind of music that is being broadcast from stations that do not pay this license fee, as I understand it. Mind you, I am only giving the position as I understand it; I may be wrong in some of my facts, I don't know.

Q. Do you know of stations sending out copyright music without paying royalties?—A. I know there are certain stations like the American Telegraph Company which has a very big chain, and, speaking from memory, I believe they pay a license fee. I have heard our songs broadcasted from some stations, and there are other stations from which I have never heard our songs broadcasted, but they have music which is in the public domain.

By Mr. Ladner:

Q. Supposing that this bill which is before the American Congress limiting free music passes, do you think that the Canadian broadcasting stations should

be obliged to pay royalties?—A. My position is that music in Canada will be free to be used whenever they want it, provided that they reserve a part of the receipts for the author.

Q. That does not answer my question. The simple proposition I put is this: Supposing that in the United States the bill is passed limiting the free use by broadcasting stations of music, do you think our laws should impose royalties on Canadian broadcasting stations?—A. I think that would be a question to face after the United States took action.

Q. What would be your opinion?—A. I have not given the matter any consideration because it is a condition that does not exist.

Q. But on the assumption that it does exist, what would be your opinion?—A. I do not propose to give my opinion; that is entirely theoretical.

Mr. IRVINE: It is not theoretical if the bill is passed by Congress.

Mr. CHEVRIER: In all fairness—

Mr. LADNER: If the witness does not wish to answer the question, I will draw my own conclusion.

The CHAIRMAN: Only one question at a time, gentlemen. If more than one member speaks at one time it is impossible for the reporter to take down what he says.

By Mr. Healy:

Q. You are the largest publisher of music in Canada?—A. Exclusive publisher of music. There are certain other publishers, like Whaley Royce in Toronto and firms in Montreal that publish music, also job music, and distributors who handle musical instruments and other things. Our firm is devoted exclusively to music publishing.

Q. If I understand the opinion you are trying to give to the Committee it is that we should worry about Canadian troubles without going to the United States or to any other country, and trying to correct the evils that exist there?—A. Yes.

Q. You think that if we protect our own authors in our own country that is the problem?—A. When you protect your own writers like myself and others with whom I am associated in foreign countries, as a necessary corollary you have to protect their nationals in our country.

Q. Perhaps you will agree with this that it is going beyond the jurisdiction of this Committee that we should worry about what is going to happen in broadcasting stations in the United States?—A. I think we should concern ourselves definitely with the principle of right and wrong of the position in Canada and the national aspects as they affect Canada.

Q. The principle that the work is the property of the author and that it should be his to sell to whom he wishes, and not to sell if he so desires?—A. Yes.

Q. And if these proposed amendments cover that point they should be satisfactory to the author—I mean the proposed amendments in the bill, not the amendments proposed by witnesses. Have you read them?—A. I have read them but without specifically following them. I would have difficulty in referring to them. I am talking on general principles more particularly, and leaving it to the Committee to apply them to the provisions in the bill.

Q. You would not like to give your opinion as to whether these proposed provisions in Mr. Chevrier's bill are correct provisions?—A. Right at the moment, I could not say what they are. I know my general impression is that they amplify and define the rights of radio broadcasting and specifically state that "public performances" shall apply to radio broadcasting.

By the Chairman:

Q. Would that be amplifying or restricting?—A. I would think it would be a matter of definition; it would be an attempt to define.

Mr. CHEVRIER: May I suggest that it does not do either; it does not amplify and it does not restrict. It says what is.

Mr. HEALY: I have listened to the witness for nearly an hour with patience and I think I should be allowed to put my question.

By Mr. Healy:

Q. Why put the load of collecting payment to the authors on the government? Why not form your own association in Canada and make your own deals with the broadcasting stations?—A. The method I have suggested here is I think the most practical method.

Q. I will admit that it is easier for the owners of copyright, but it is not making the action very popular with the general public or with the government?—A. I have spoken to several people that I have met, radio listeners-in, and I am a very keen radio fan myself—I experimented with wireless when I was a youngster, and I am very much interested in broadcasting and anxious to see it developed in Canada. At the same time, I am also anxious to see authors and composers develop in Canada and to have the privilege of having their works broadcasted. I do not think it should be on the basis that obtains in the United States. If a writer of songs succeeds in getting Canadian songs broadcasted time after time, he should get paid for them. Further, if it is an association or combination of interests similar to what exists in the United States, the position of the Canadian writer will be much harder.

Q. I agree that it will be more difficult—A. And in other countries where they are organized, like England, France, the United States and other countries where they are highly organized they will be so much more powerful. In Canada, unless you pay a fee on the times that their works are broadcasted, you are not going to encourage Canadians to write songs and get them played on the radio. Give the Canadian composer a chance to write a song to-day and go to a broadcasting station and get it played to-morrow; if the broadcasting station thinks it is good enough to play in Vancouver, Toronto and Montreal; give him a chance to broadcast his work. The total music produced in Canada at the present time is so small that he would not have the chance that he would have if it was paid on the number of times it was broadcasted.

Q. What would be your method of getting more domain for a real hit?—A. It would be played more often.

Q. By the broadcasting station?—A. Yes.

Q. And some record of it kept in that way?—A. Yes.

By Mr. Ladner:

Q. What would be the fee say on a song like "Dear Old Pal O' Mine?"—A. Speaking as a publisher, we have not been particularly interested in that.

Mr. CHEVRIER: Why not ask the author that?

Mr. LADNER: The witness says he does not know.

By Mr. Healy:

Q. I do not think that that enters into the question at the present time. If the author sells at all, he will sell at a price agreeable to the purchaser, or he cannot sell?—A. Yes.

Q. It is his property, and that should be a question of agreement?—A. Yes.

Q. If you collected through a license system, how can that be a question of agreement?—A. Of course that is where the law may enter into the case and fix a provision that would be fair all around. As I see it,—of course, I have reached only my own conclusions through reading both sides of the question and studying the situation in Canada—and the principle should be that he be paid for every time the work is used.

Q. Is that principle used in any other country?—A. You mean by fixing the remuneration?

Q. By collecting license fees and dividing them among the authors?—A. In England and I believe in Australia, from what I have heard.

Q. You think it works?—A. So far as I have heard. I have not heard of troubles such as have developed in the United States, either in England or in France or in Australia or in this country.

By Mr. Hocken:

Q. Under the present protection that the authors have, under the criminal code and the clause in the present Act, do you not think that the author is protected against infringement of his right?—A. That is my own view, that he is protected, and if he wishes to enforce it he can. I have always felt like taking this position, that there are certain songs that I would like broadcasted; I make no hesitation about that. There are certain songs that I wish to have broadcasted.

Q. But you think that the present law provides protection for the author?—A. Yes, but we do not know what is going to develop in the future. It may be that we will offer to the public certain songs for theatres and certain songs for the radio.

Mr. CHEVRIER: There have been enough sins heaped upon my head by misrepresentation, misunderstanding and distortions of all kinds. Let me point out this to the Committee that nowhere in the bill which I have presented is there anything that says as to how and where the onus of the royalties is to be placed. Some one is trying to suggest that I am trying to put the onus of the royalty on the broadcaster and on a multitude of others. There is nothing of the kind in this bill for the simple reason that we decided to meet that by allowing it to be arranged by the Governor-in-Council. Mr. de Montigny in his evidence the other day stated that those he represented, the authors, are satisfied to let the Governor-in-Council make such regulations as will cover the amount of royalties and the collection of them. We do not want to place this on the radio fan, on this party or on that; all that this Bill asks for is that the principle be approved that a royalty shall be collected. The amount of royalty, where it should be collected, or how it should be collected are matters for the Governor-in Council to decide.

Mr. E. BLAKE ROBERTSON: Under what clause?

The CHAIRMAN: Do you not think gentlemen, that it would be better to proceed with the hearing of the evidence?

Mr. CHEVRIER. Pardon me, I am going to ask for a little bit of fair-play because I have been attacked from all directions and all sources on this matter, and Mr. Healy says that the measure is very unpopular with the public and the government.

Mr. HEALY: I did not say that.

Mr. CHEVRIER: It is because they do not understand what this bill is. I am not trying to make any undue application of the law; I am simply asking for the approval of the principle that an author has the right to dispose of his property in the way he wants; that he has the right to let it go under certain conditions, and that if you do not pay the amount of royalty he need not take

it. But where the royalty is to be placed or how it is to be collected, we are agreeable to let the Governor-in-Council decide. If you will not do me any other favour in this investigation, at least give me the benefit of this good faith. You are distorting the whole meaning of the bill, and everybody is raising a bug-a-boo because they do not understand it and those who do not understand it are wilfully misrepresenting the facts.

By Mr. Irvine:

Q. I think you stated that you estimated a loss of \$1,000,000 to song writers in Canada under the present law?—A. No, I did not say any such thing. I said that during the period in which phonographic records were absolutely free by our country not having passed laws similar to those in Great Britain and the United States, my estimation of what probably it cost the writers of the world and their agents and publishers would be roughly \$1,000,000. It has nothing to do with the radio situation whatever.

By Mr. Hoey:

Q. Would you distinguish between broadcasting stations that broadcast with some idea of profit in mind and broadcasting stations that are supposed to broadcast just for the public weal?—A. Gentlemen, I do not pretend to be any oracle on this subject, but I feel as a publisher that I would like to be able to withhold certain numbers from stations that even broadcast without profit.

By Mr. Chevrier:

Q. Why?—A. For the simple reason that they might destroy my property.

By Mr. Hoey:

Q. The point I had in mind was that if you gave to stations such as the Manitoba Government station which has a monopoly of broadcasting in the Province of Manitoba, the right to broadcast songs, that would destroy their value absolutely, or almost so?—A. I would not say unqualifiedly that it would. I believe that the musical composition that is more involved requires more frequent repetition for people to get it into their consciousness. That type of composition might be repeated time after time without doing it any injury; in fact, it might help it considerably.

Q. But in the case of songs it would tend the other way?—A. With some songs, too much broadcasting would certainly injure their sale. Take a little dance number that we have published, "Doo-Wacka-Doo," which is simply a little imitation of a cornet played. There is nothing really much to it; it is a little catchy played on the dance floor a few times and people go home and say "I would like to have that." But if they were to hear that time after time, they would be swearing at it before long.

Q. It is exceedingly difficult to determine between stations which broadcast songs and stations that do not?—A. Exceedingly so, I should think so. I shall proceed. There are three things necessary to the successful broadcast. First, interesting material, the creation of the author or composer. Second, the right type of artist to interest the audience. Third, the mechanism necessary to broadcast and receive properly the work of the author and composer. The radio interests are paying for their mechanism. They are granted the protection of the patent laws and artists are demanding their pay, then why should the author and composer, whose work is so fundamental to the success of the whole undertaking, remain the only unpaid party in the transaction? Surely no one in Canada would object to 10 cents of his dollar license fee going to recompense the authors and composers whose work makes broadcasting a possibility.

Surely the government of Canada, the wealthy radio interests and the public in general could not object to this small recompense towards the encouragement of authors and composers not only in Canada but the world over.

Once admit the principle that radio is subject to copyright control and grant that the method I have suggested of recompensing the authors is a proper one, the details of the plan can be worked out later.

It is quite feasible to work out a plan of distribution on the basis of time consumed for the performance of the work and the range of the station. All programmes could be forwarded to the central bureau and royalties figured therefrom. It is simply a question of equitable accounting. Furthermore, I think that the license fees should not only take care of the authors and composers of songs but should also recompense poets, speakers or any other creator whose work is protected by copyright.

Leo Feist Limited, speaking as a publisher of sheet music, is more interested in the control of the broadcasting of its songs than it is in the amount of royalty received under such a plan. Our company is very anxious to have this controversy settled in such a way that it will not interfere with the good relations existing between ourselves and the radio interests as well as the phonograph interests. We do not want to get any unfair advantage of this situation but seek only an equitable settlement that will recognize the rights of all. This company is satisfied to operate under the legislation that stands at present on the books and was in no way responsible for the introduction of any amendment at this session. We feel, however, that copyright is fundamental to the success of our enterprise and would like to see the whole question satisfactorily settled so that the basis of our industry may remain secure for some years to come. It has been a very difficult struggle to make printing in Canada of music a commercial possibility. Our Canadian company is still struggling against a deficit developed during the first two years of its existence. The profits so far have not been sufficient to wipe out that deficit. Had it not been for the protection granted by the new copyright law, which gave us royalties on phonograph records, our organization in Canada would have had to close its doors. All we ask is treatment that will allow us a fair chance to develop the music publishing industry in Canada as a Canadian institution and that our rights as publishers be recognized along with those of writers and the manufacturers of mechanical equipment for reproducing our works. We are quite satisfied to trust the good judgment of this Committee and of the Parliament of Canada to protect the fundamental rights of all concerned.

Gentlemen, I thank you for this patient hearing of my remarks.

Mr. CHEVRIER: May I ask a question of Mr. O'Halloran? I notice that Mr. O'Halloran says that the present clause is very satisfactory. Does the proposed amendment in any way hurt the rights of anybody?

Mr. O'HALLORAN: I think the proposed amendment insofar as it would tend to lessen the rights of the authors or composers, might lead to trouble.

Mr. CHEVRIER: Does it do that? Does it in any way tend to hurt the rights of anybody?

Mr. O'HALLORAN: I am not sure what the proposed amendment means.

Mr. CHEVRIER: Supposing the proposed amendment means this and nothing more, that anybody who plays without profit will not pay a royalty, but anybody who plays for a profit shall pay a royalty, the amount of which is to be determined by the Governor-in-Council?

Mr. O'HALLORAN: Under the law at the present time, the author or composer has absolute control of the performance of his work. If your amendment is, in effect, different it will lessen that right.

Mr. CHEVRIER: Let us take the word "performance"—

Mr. LADNER: I think we ought to hear the witnesses who are here first. This matter can be discussed when we come to arguing in the Committee.

Mr. CHEVRIER: Why is it I cannot ask a question?

The CHAIRMAN: I think the procedure was that while the witnesses were here discussion amongst members of the Committee would be avoided.

Mr. CHEVRIER: It will clarify these misunderstandings, misapprehensions and fear, but any time I want to hit that nail on the head, somebody, including yourself, Mr. Chairman, with all due deference to the Chair, says, "Let somebody else proceed."

Mr. O'HALLORAN: I will be here, God willing, for any discussion that may take place.

The CHAIRMAN: Mr. Chevrier, there is no desire to stop you from asking questions, but it was the wish of the Committee—

Mr. CHEVRIER: But a lot of this discussion can be avoided if we all have a clear cut idea of the situation. However, proceed with the witnesses.

Mrs. MADGE MACBETH called and sworn.

By the Chairman:

Q. Will you please state whom you represent?—A. I am an author.

By Mr. Chevrier:

Q. Mrs. Macbeth, I understand you are the President of the Ottawa Section of the Canadian Authors' Association?—A. Yes.

Q. Are you an author?—A. Yes.

Q. What literary works have you produced?—A. Have I produced?

Q. Yes?—A. You don't want me to name them all, Mr. Chevrier, do you?

Q. Give me the number of them?—A. Oh, I cannot; seven novels, all published here and in the United States and England; perhaps 250 or 300 short stories; 400 or 500 articles; skits—I cannot enumerate them all.

Q. You are interested in this present legislation?—A. Vitally.

Q. From what point of view?—A. Well, from the point of view of the property rights of the authors.

Q. And what interest have the authors in this proposed legislation?—A. Principally, I should say, the right to live—self protection.

Q. Does the bill, as I propose it, improve the conditions under which the authors would—A. No, I should say not.

Q. The bill that I propose—A. Oh, the bill you propose?

Q. Yes?—A. With the licensing clauses removed?

Q. Yes?—A. I am sorry I misunderstood you.

Q. Do you think it would be an improvement?—A. I think it would be an improvement.

Q. I gather that you have an objection to the licensing clauses?—A. Yes, I have an objection.

Q. Would you mind stating what it is?—A. I have listened with a great deal of interest to the last witness, and I regret, Mr. Chairman and gentlemen, that I have not my scattered ideas in such a splendid and concrete form. I had expected that those who are in favour of the licensing clauses might ask me questions so I could answer as succinctly and briefly as possible. I have not as long a statement as Mr. Thompson had. I object both on ethical and economic grounds. It seems to me the licensing clauses affect us in both of these ways. I do not think they are ethical, and they are certainly not economic. In many conditions they would be harmful to our interests and we would lose

[Mrs. Madge Macbeth.]

money by them. You see, Mr. Chairman and gentlemen, it has always been like this, that the product of a person's mind is placed on a lower financial basis than the product of his hand. I understand the plea from the printers and typesetters and linotypers, but I have a plea too. From time immemorial the workings of one's mind is supposed to have been above financial consideration. I assure you that such is not the case. We are very much concerned with finances.

By Mr. Healy:

Q. In other words, you have to eat?—A. Heartily. Writing is an exacting business and it gives one a fearful appetite. May I say that I am not here to oppose the printing or publishing interests. I feel that if anyone can speak with kindness and with sympathy in regard to the publishing and printing interests, I am the one. There is no writer in Canada who has evidenced that more in a thousand different ways; there is no writer in Canada who has been concerned with so many defunct magazines and publications as I have; there is no writer who has so cheerfully fed printers and typesetters as I have; every time a magazine is born—every time a company is coming into being—I am asked if I will not donate some of my work. The payment is problematical; sometimes they tell me that, and sometimes they don't. I take it for granted if they can pay me they will, but this is what happens—and has happened time and time again—that the magazine is not supported by the intelligentsia of Canada; no one advertises it, and the ones who are paid are the printers, the typesetters and the linotypers. Who is unpaid? The people who have kept the magazine pages full. I am a friend of the printers and I hope I have established that fact. I am not opposed to anything which is suggested that will help the authors, but I want my own property; I do not consider that when I have written a story or a novel or an article that I should be asked to divide fifty-fifty with the printers. Similarly, if any of you gentlemen manufacture a pair of boots, do you consider that when the tanner has been paid, he owns 50 per cent of those boots? No. I want to own my own work.

By Mr. Chevrier:

Q. And as a result of all your writings—.—A. I have gray hair and wrinkles.

Q. —and of helping these defunct magazines, what is your financial position with reference to that now?—A. Very poor indeed—very poor.

Q. Did you get any help from anybody else—.—A. I am afraid that the Committee have heard so much of this that I do not like to tell you the story of my early struggles, but this much I would like to establish, that when I began to write I need not have stayed in Canada; I could have gone to the States; I could have published in the States where there would have been higher financial returns and, in a sense, broader recognition, because, gentlemen, to have a great name in Canada one must first publish in the United States—the prophet in his own country. I did not do that. What did I do? I stayed here, and when I asked for financial help—when I asked an editor or publisher for more money—what was I told? “Our expenses are so heavy; our paper costs so much; our tariff on machinery, and wages to printers, and our ink cost so much that we cannot pay more to the writer.” They set the wages by union; the writers did not. We never did. They did not help me when my children were small and I needed boots for them. I am not really writing to help the printers;—I did not intend to say this, but I was forced into it by Mr. Chevrier's question—there is the ethical point. I do not think the printers should require me to write for them. Is that your point, Mr. Chevrier?

Q. Not precisely, but it comes out in your answer. I just wanted to know if, after producing so much, the protection that has been offered to you

[Mrs. Madge Macbeth.]

by the Copyright Act has enabled you to make a considerable amount of money, and to really get from the product of your brain the remuneration to which you were entitled?—A. I might put it this way—I am not sure I understand your question now—; I am perfectly satisfied with the legislation as it has been, in which my property rights are respected, although I have not made a great deal of money. I represent a writer who has lived by her pen and been able to stay in Canada, but if you license my material, I cannot stay in Canada nor can I keep on writing. We are very much in the position of the organist and the bellows-blower. I do not know whether you know the story or not. There was a dispute between the organist and the bellows-blower and the triumphant establishment of the latter's claim was that the bellows-blower was part of the music, because when he stopped blowing the bellows the organist had to stop playing.

By Mr. Irvine:

Q. Mrs. Macbeth, just how would this affect you in a financial way?—A. I think the last witness was a little bit bothered by a sort of a hypothetical case. I will give you one. I write a book, and I have the United States book and rights, and a Canadian publisher either does not see the value of that book or does not feel that he wishes to take it up, or in some other way the book misses fire. Our course of procedure then is rather different, once you get your book sold in the United States. That is what I say; I am perfectly satisfied with the conditions as they exist. I see my own publisher in the back of the room, and I think he will agree with me, and if I might take the time, Mr. Chairman, I might outline the situation as it exists. If I sell a book to Small-Maynard in the United States and a Canadian publisher who has business relations with Small-Maynard should take the Canadian edition of that book—that is the way we publish, as a rule—it is all right. But supposing that does not happen, or supposing I sell to Small-Maynard, or Little-Brown, or Doubleday, or whoever it may be, and I have no publisher in Canada. The licensee takes out the right to publish and does not give me the royalties I have the right to collect. He may not even publish the book in the same form which I would like. The illustrations, headings and so forth might be different—the practical point is that I do not want to get any lower royalties in Canada than I get in the United States. Further than that, I wish to have the opportunity of selling my book, myself. I may not want to sell it to that licensee. I know publishers to whom I would not be willing to sell. A magazine not very long ago—it is dead; God rest its soul—advertised my name without permission as a contributor. I saw myself licensed, so to speak, and I would not have wanted to sell to that magazine. Fortunately the story did not come out. The magazine died before it was born.

By Mr. Ladner:

Q. Was that a serial story?—A. A series of stories. They were advertised. They had been published in another magazine.

By Mr. Chevrier:

Q. Did you ever find your literary products advertised under a different name?—A. No, but I have seen them advertised under no name at all. I have seen them advertised when my name did not appear at all, but that is a penalty one pays for losing control of one's own work. A moving picture of a story of mine was filmed and went all over Canada and the United States without my name appearing on it at all.

Q. What was the name on it?—A. It had the name of Robert Service on it.

Q. What was the title of your moving picture?—A. My book was called, "Kleath." The picture came out with the characters and the scenes in the very smallest detail—I had some correspondence about it—and it was established

beyond doubt that it was my book, and it came out under the Service title, and he got the credit, and so far as I know, he got most of the money. On the title page amidst a beautiful scene of rocks and foam, there was the producer's name, the name of Robert Service, the name of the scenario writer—everybody's name but mine.

Q. What title did it appear under?—A. "The Law of the Yukon"; it was at the Regent and the Francais here.

By Mr. Ladner:

Q. Would this amendment give you any greater protection than is now given to you by law?—A. Yes, I should say so. But here is a point, too; in a sense, this situation would be very suggestive of licensing clauses, as they now stand, for this reason; that my hands were tied, in a sense, because I did receive a small sum of money. I might receive—I would receive—a small sum of money under the licensing clauses as they are now pending.

Q. Under the law, can someone now act as a pirate to take your work? I thought the very essence of the copyright law was to protect persons against piracy and infringement?—A. This is what happens when I lose control of my own work.

Q. You sold the rights outright?—A. I sold the rights not realizing I was selling them outright; I did not know I must keep control; now I know I must keep the control.

By Mr. Hocken:

Q. Have you had any of your works licensed?—A. No, I have not.

Q. Have you suffered any from the licensing clauses?—A. No, I have not suffered any, but may I point this out, that the principle of the licensing clauses is wrong?

Q. Oh, we have heard all that.—A. Yes, I suppose you have. I would not go into that at all, except to say this: under certain circumstances this condition may presently develop—and I say this because it is very likely to happen—that in every walk of life, in the church, in politics, in medicine—everything else, where there are honest men, dishonest men will come in and make profit by the examples of the honest men. I have not suffered by the licensing clauses, nor do I expect to suffer. I have confidence in my publishers and printers to-day, but I can see, as in the case of this magazine—whose name I would much rather not mention—that I would have suffered if the public had not killed it before it was born. In fact, I think there was only one issue on the newstands, but I would have suffered, and all of us would have suffered. May I not ask this question? If the licensing clause is so altruistic in its nature, why do you want it? I say "you" impersonally. Why do our opponents want it so badly? Why not leave it alone? If it does not benefit them to the exclusion of us, why make such a fuss about it?

Q. Are you aware that if one of your works is licensed, you would get a royalty?—A. A small royalty, as I did for my picture.

Q. That royalty to be determined by the Minister?—A. I have the greatest respect for the law-makers of this country, and I have the greatest respect for the ministers, but a minister who is not writing for a living does not know how to fix a price that is suitable to me.

By Mr. Healy:

Q. You would rather fix your own price?—A. Certainly I would rather fix my own price. If you were manufacturing overcoats, would you want a minister to fix the price at which you can sell those to the public and to tell you that you may only sell to this person or that person?

Q. You must pay the designer his share?—A. Yes, and I pay the printer his share too.

By Mr. Hoey:

Q. Were you born in Canada?—A. No, I was not. You understand, I am not speaking personally, I am speaking for the authors. As I told you, I have lived, I have got on through the amicable arrangements that have existed, and I would not have them changed.

Q. Do you think it is fair that the Canadian born author should be placed at a disadvantage as compared with an author born in England, say?—A. No, I do not think a Canadian author should be placed at a disadvantage.

By Mr. Irvine:

Q. Mrs. Macbeth, I think you have intimated—and I think truly—that fundamentally this is an economic question both with the authors and the publishers.—A. Yes.

Q. And you suggested that the licensing clauses will be detrimental to the authors, and it is suggested by the publishers that if we remove the licensing clauses, it will be very much the same, that is, detrimental to the publishers.

Mr. HOCKEN: Mr. Chairman, I would like to distinguish between printers and publishers. The printer is not interested in this thing; it is the publisher.

Mr. CHEVRIER: No, not in the slightest.

Mr. HOCKEN: The printer is only incidental.

Mr. IRVINE: I will make it anybody, printers or typesetters or publishers.

By Mr. Irvine:

Q. The economic interest is equal to the other, and I must try and judge between these two interests. Have you any suggestion by which it would be possible for us to protect what is your proper economic right, and at the same time protect the rights of these printers? Have you any suggestion to make?—A. May I ask a question? How is it, that whichever you may say, printers, typesetters, publishers, or whatever it is feel that their rights have been violated? In what manner have they not been protected?

Q. That is a question, of course.—A. I am only asking for information, and not arguing at all. I don't know how they feel that they have not been protected. Perhaps I could answer you more intelligently, if I know what their contention was; but I don't know that.

Mr. IRVINE: Of course, the same would apply to your position, when you say that you have not been harmed by these licensing clauses, and when we know that nobody is being brought forward to say that they have been harmed in any way, so that leaves the question 50-50 still on each side.

Mr. CHEVRIER: Oh no.

Mr. IRVINE: In my opinion, but perhaps in your opinion it is not so. In my opinion the thing is 50-50 and I do not see the difference. I do not want to do anybody out of their economic rights.

By Mr. Chevrier:

Q. May I ask the witness this question, so that it will come back to Mr. Irvine. This copyright legislation is for the purpose of protecting the author. What right has the printer, what economic right has the printer in your book, Mrs. Macbeth? You have an economic right in the production of your own material. Let me ask you this. What economic right has the printer, with all respect to him, in your work?—A. Sir Daniel Wilson, late President of the University of Toronto, in writing a paper for the Royal Society of Canada, rather answers that. He says here something like this:—

[Mrs. Madge Macbeth.]

"The author is really classed apart as a pariah, outside of the ordinary rights of property in his own products. If any other class of manufacturers—and surely an author's manuscript is a very special class of skilled manufacture—were so dealt with by the legislature, it would be denounced as a monstrous wrong."

I don't know whether that quite answers it or not.

By Mr. Irvine:

Q. I see the point, of course, but the printer or any workman who manufactures anything loses what rights he has immediately he finishes the instrument or product and is paid for his labour. I am not saying that that is a good condition, but I cannot see how we can get legislation that will give this right to everybody concerned.

Mr. CHEVRIER: Just eliminate the licensing clauses and do not interfere with the supposed rights of somebody who has no rights at all.

Mr. IRVINE: But my point is that since nobody has been hurt by these licensing clauses, would it not be better to leave them until somebody has been hurt?

The WITNESS: No, no more than to leave things as they are because the printers have not been hurt by the legislation; that has been brought out here.

By Mr. Irvine:

Q. They claim they have been.—A. May I ask how? We must give our material into their hands, and I was not meaning to be especially humorous. I assure you, because it was not especially humorous to look around for fifty cents, in the early days, to buy a pot of antiphlogistine for my sick child, and I am sure the printer did not give it to me. I did not harm him. He has no more right in my book. His right is in the machine. When you put a higher tariff on the machine or make his wages lower or something like that, let him speak, although even then the writers will not have harmed him.

Q. There is certainly a co-operative quality here; you could not get out a book if somebody did not set it up.—A. That is not quite true, because if we make an extreme case of it, I could do as the old monks did in the old days; or I could have it multigraphed, I could have it printed by hand, or issued in some other way.

Q. But you would not like to do that?—A. I would not like to, but I do so many things I do not like.

Q. I do not think you should take that position. The fact is that as things are now the printer and the typesetter and the publisher are all co-operating with you to work this thing out.—A. Not to own a part of it.

Mr. IRVINE: You have produced your work, of course, and wish to be protected in every way, but the man who sets the type has to be protected also, and you asked just now how this affected him. It affects him in this way; according to the evidence, we have been told here that an author may sell his book in the United States, and by these licensing clauses the Canadian printer may publish that book in Canada under certain conditions, paying, I understand, the same royalty that you are receiving in the United States?

Mr. CHEVRIER: Only when it is a winner, then he will go for it. The idea seems to be to let him starve when he is young, and then when he makes money, go after him.

Mr. LADNER: I have a question which I would like to ask along the lines Mr. Irvine was trying to get at, and has not been able to get, although it is not his fault.

By Mr. Ladner:

Q. It has been suggested by interested parties in the publishing business that under the licensing clauses the United States publisher stands in a very advantageous position as far as serial stories are concerned?—A. What do you mean by that?

Q. A story, as I understand it, which is published in one of our monthly periodicals.—A. You have switched now to serials. That is a different matter. Go ahead.

Q. Yes, I am speaking of serial stories, for magazines. Let us say an author went to a publisher in the United States—and the author dealing with a great publisher down there is at a disadvantage. The publisher says, “I not only want the rights for the United States but for Canada as well,” and perhaps the author does not receive any more money for that concession, but they say, “Well, here is the story, and the United States publisher can offer good royalties” and they make a certain dicker. Now, that is that. When the Canadian author sells there, the United States author may circulate that so that the people in Canada do not receive much of it at all. The publisher here says, “If you have the licensing clauses then we could publish that story in Canada also, and the author receives a royalty from us.” What do you say to that situation, is that a good situation or not?—A. I could put that in just a few words. It is beyond belief that there is any author living who does not want the best terms and the greatest publicity, for work which the author considers good. Here is where it works the other way. If that author sells in the United States—which we all must admit is the controlling factor for us in all phases of our economic life—I still withhold the ethical, because there is a great big ethical point that cannot be swallowed. Mind that, it is our object to sell if possible in the United States, because only then do we become necessary to our own people. An editor went so far as to say to me, after I sold a story to the Ladies’ Home Journal, or something or other—The Curtis Publishing Company—“We can pay you more for your stories now, since you have published in the Ladies’ Home Journal.” I had to become an author for the Ladies’ Home Journal before I could get even a living wage here. Now what happens? I sell a story in the United States, and I think you have been misinformed if you say the author who has been paid for the whole rights does not receive any more than if he received pay only for one particular section of the country. If I sell to Munsey’s Magazine, Mr. Davis is too businesslike to pay me for England, the United States, Belgium, France, and Jugo-Slovakia. They pay for the United States only, and then I have the right to sell in Canada. I make a great distinction, if you please, between magazines and books. I sell in Canada and in England, and even then I get a smaller price en masse; the massed price I get from all these countries is rather smaller than if I sold to the Saturday Evening Post for exclusive rights to everything. What does licensing do? If you are Mr. Gilbert Parker or Arnold Bennett or John Galsworthy, the licensing clauses benefit the public in this way. I can get a better magazine and better reading matter in Canada under the licensing clauses, because they can buy from the best authors in the world for a smaller price than they would have to pay a Canadian author for original material, and they are doing it. Presently the little fellows will be crowded out, and although genius is born and not made, genius does need a little bit of apprenticeship in a technical sense, and if the magazines get filled with Bennett, and Parker, and Stringer and all these people, where will native Canadian authors sell? There is the danger which hangs over our head, that some unprincipled man may issue a magazine and fill it, under the licensing clauses, with the best literature of the world, and exclude his own countrypeople. We need work just as much as the printers do.

By Mr. Chevrier:

Q. Mrs. Macbeth, you have produced quite a number of literary works and under the law as it stands now, did you have to register them?—A. I have registered some works recently, yes.

Q. Under the Act in force since 1924?—A. Yes.

Mr. CHEVRIER: I might say, Mr. Chairman, that the reason I am asking this is that there are certain sections later on in the Act which refer to this registration, and I want this witness to give her evidence now, as the bill proposes removing these registration clauses.

Q. Did you experience any trouble or difficulty in registering under the new Act?—A. The circumstances have grown so dim I scarcely know. I had never registered anything before, and it was all new to me. I took my work—which was a ponderous novel, heavy in all senses, and dull, I admit—under my arm to the registration office. I was in a hurry to get the registration number for it; it was a matter I had to be in haste about, and I asked for a number at once. They could not give me a number at once, so I paid I think \$3, I am not sure, and a number was to be sent me. Nobody could find a number; everything was upset, and I had to wait several days for my number, which had to be wired to the necessary sources. I considered it a nuisance, but if you open the registration point—and an author must register all the stuff he writes—you will drive us out of business entirely. It cost me, I think, \$3—.

Q. Is it not \$2 for registration and \$1 for the certificate, \$3 in all?—A. All right. Now then, for 200 articles a year and for 75 short stories a year, and one novel a year, if I had to register in Canada, in the United States, in England, in Belgium, and in France, I could not write; I do not make that much money, so I could not write. The registration clause is one of the most difficult for us.

Mr. CHEVRIER: The reason I make that point is that I want that evidence for this reason—and I do not want any controversy over this point now. It is simply that under the convention of Berne there is to be no registration. There is no registration in Canada, and none throughout the Unionist countries. There is no compulsory registration in the present Act, except that it becomes compulsory when you want to sue for the recovery of your rights, and unless your products have been registered there are certain things you cannot do. Under the convention of Berne no registration is necessary, the law does not make it compulsory by any determined section, but the effect is that if you do not register, you cannot sue. The result is that if you produce—

Mr. O'HALLORAN: Is that under the present law?

Mr. CHEVRIER: Yes, and you know it.

Mr. O'HALLORAN: No I do not.

Mr. CHEVRIER: I will show it to you. The result is that if you produce say two hundred or three hundred articles a year you have to register them in Canada if you want to sue or start legal proceedings. If you have to do that in Canada, as Canada is under the convention of Berne and as reciprocal treatment is accorded the thirty-five other unionist countries, it would mean that Mrs. Macbeth, in order to be protected in Czecho-Slovakia, Japan, Belgium, or France, would have to register there, because a unionist author in France, in order to sue in Canada would have to register. So, if Mrs. Macbeth has to register three hundred times at \$3 each, that is \$900 in Canada; the same law applied to unionist authors, and they would have to register, and Mrs. Macbeth would have to register in 15 or 20 other countries at about the same price.

By Mr Hocken:

Q. Mrs. Macbeth, this book that you registered, had you sold the rights?
—A. Yes.

Q. Outright?—A. No.

Q. You had not sold your rights completely?—A. No, never again if I can help it.

Q. To what extent had you sold your rights?—A. I had sold the serial rights.

Q. You had sold all the serial rights?—A. No, I sold the serial rights to the parties who wished to purchase them, under certain conditions.

Q. For the United States and Canada?—A. No, for a certain section of Canada.

Q. You registered, then, to prevent anybody else doing that?—A. Yes.

Q. Was that necessary?—A. Yes, I understand it was otherwise there could be reprints.

By Mr. Chevrier:

Q. In what year was that?—A. This year. There could have been reprints, which is quite a usual thing, you know. Suppose, for instance, an article or a serial comes out in, let us say, the Toronto Star, or it can be the other way. This thing has happened, and personally I was very glad to have it happen, but there is a point on the side of the authors that might be understood a little more sympathetically. If I write an article for Maclean's Magazine, and the Star takes a fancy to it, the Star can reprint my article without paying me anything, and give the credit to Maclean's Magazine. That is not quite fair.

By Mr. O'Halloran:

Q. I understood you to say you had to wait several days before you received that certificate?—A. Yes.

Q. Are you aware that there might have been 500 applications for registration pending when your application was filed?—A. That was not exactly a criticism of the department at all, it was just this point, that I was waiting for publication to get my number, and certificate, and delay made a difference, because magazines and newspapers go to press at a certain date, and if I had not had to register at all it would have been very much simpler to just say, "Yes, the material is yours; go ahead." When it was delayed, it made it a little more difficult for me and a little more difficult for my editor.

MR. CHEVRIER: Do you say, Mr. O'Halloran that there might have been 500?

MR. O'HALLORAN: Yes.

MR. CHEVRIER: If there were 500, surely those people did not register for fun; surely it was because it was necessary to register.

MR. O'HALLORAN: We are receiving a great many.

MR. CHEVRIER: It is because it is necessary to register.

MR. O'HALLORAN: I am convinced of the opposite.

MR. CHEVRIER: Then we agree to disagree.

MR. O'HALLORAN: You will have an opportunity to change my conviction when we come to the discussion.

Witness retired

The CHAIRMAN: It is now 1 o'clock, shall we adjourn?

Mr. LEWIS: I suggested that Mr. Appleton should be heard this morning, and it was agreed to.

[Mrs. Madge Macbeth.]

Mr. HOCKEN: I thought Mr. Appleton had changed his evidence.

Mr. HOEY: I thought that matter was settled.

Mr. APPLETON: I want to clear the air.

The CHAIRMAN: Will it take much time?

Mr. APPLETON: No, sir.

F. F. APPLETON recalled.

The CHAIRMAN: Mr. Appleton has already been sworn. He is still under oath.

WITNESS: This is a statement which I wish to make qualifying my evidence on the basis of my previous remarks and applying it only to books that could be printed in Canada profitably.

After giving my evidence before the Committee on the 17th, I undertook to carefully consider the subject solely from the standpoint of the publisher and the author. It occurred to me that the licensing clauses placed in the hands of business competitors a means whereby they might injure my firm through application for licenses on books the sale of which did not appear likely to be sufficient to warrant printing in Canada. I realize that any competitor taking such action would do so at a loss to himself, but firms occasionally find themselves in a position where an immediate financial loss is justifiable through the ultimate outcome, and in this frame of mind I wired the Committee and wrote the letter which has been published in your reports. The paragraph which really contains the gist of the conclusions I reached reads:

"My remarks before your Committee were only applicable to works for which the demand was sufficiently large as to make printing in Canada commercially possible, and I had no desire that these provisions should apply to all Canadian books, many of which are not sold in large enough quantities to produce separate Canadian editions in the first instance."

After sending the wire and letter, I discussed the matter with Mr. Musson who had just returned to the city. He admitted the possibility of the licensing clauses at times operating unfairly against our firm but he took the positive stand that this was a risk which we had not real right to attempt to evade. He admitted that from a standpoint solely of dollars and cents we, as publishers, would be better off without the licensing clauses, but viewing the question from a national standpoint and, as he said, the national standpoint was the view which would likely be taken by Parliament, he felt we should be willing to incur any slight risk of injury for the sake of encouraging the building up of Canadian industry, and his only suggestion in the way of guarding legitimate publishing interests was that the Committee might see fit to incorporate in section 13 a provision that no compulsory license should be granted for an edition of less than 2,000 copies, which change would greatly diminish the likelihood of anyone attempting to use the licensing clauses for an improper purpose and at an expected loss to themselves.

As the law stands at the present time, importation into Canada is prohibited until fourteen days after publication elsewhere; this was in order to give those desiring to apply for a license time in which to do so. You have already been requested to amend sections 13 and 14 so that licenses could be applied for when an announcement of publication is made. If you alter the Act so that licenses may be applied for when announcement is made you could quite properly cancel the fourteen day provision and then there could be simultaneous publication in Canada and the United States which is extremely

[Mr. F. F. Appleton.]

desirable from the publishers' standpoint in the case of books where a license is not likely to be asked for. There is a large circulation of American papers and magazines in this country, many of which carry announcements of publication on a certain date and the buying public who apply at a retail store for a book and find that it is not yet in or not likely to be in for two weeks may by that time, have allowed the matter to pass out of their mind and the free advertising which we would thus enjoy is lost.

I think the publisher has some interest in copyright. I have brought here a copy of the usual publishers' agreement. It is used by American and English publishers. The first clause reads:

"The author hereby grants and assigns the sole and exclusive right to publish in book form a work now entitled"

"The publishers shall also have the exclusive rights under their own name to take out copyright, obtain all renewals of copyright and publish said work during the term or terms thereof."

Here is another point which may be of interest.

"The publishers undertake to publish the said work at their own expense in such style or styles as they deem best suited to its sale, at a catalogue retail price of not less than so-and-so."

The publisher actually produces the book; he has the authority to register the copyright in his own name, and naturally he is interested in the copyright, and he is the man who protects the copyright. From an ideal standpoint the copyright law giving absolute ownership to the man who has the exclusive rights, is quite right. It is ideal. But we are Canadian publishers. If I were an American publisher, I would have a totally different story. We recognize that Bill 2 is perhaps ideal in giving all those rights to all these people, but the situation is this, that if we were an American publisher, it would mean we could take this agreement, have it signed, and we own the copyright in the United States. We would naturally comply with the copyright regulations there by setting it up and printing it there and automatically we would be copyrighted in Canada and Great Britain, and we would have that copyright for the full term, which would be 50 years after the death of the author. It means we would have ownership—

By Mr. Healy:

Q. Where would you have the printing done?—A. In the United States.

Q. And then export it and pay the duty here?—A. Do anything we like with it. If, 10 years from now, a book turned out to be a very important book, used in the schools or anything else, we would own it, it would not matter where we printed it; we would own it for an average of about 80 years. We would own the rights. That is what we have to face. We compete with the American publishers, and if it were possible for one of them to sign an agreement getting Canadian rights, what terms would we get on it? We would have to buy an edition from him and we would not have any rights beyond that edition. He would own all the rights, and we would have made the market. So it would be rather unfair to the Canadian publisher—I am speaking from a purely commercial standpoint; not from the standpoint of Bill 2 or anything else—to have a law like that, that we could buy rights in all countries, and that would practically induce us to go to the United States to set it up and print it and get the copyright there.

By Mr. Lewis:

Q. Do the United States publishers pay a smaller royalty on copies sent to Canada than on copies sold in the United States?—A. It depends on the agreement. This is the usual agreement:

[Mr. F. F. Appleton.]

"The publishers agree to pay the author or to his duly authorized representatives 10 per cent royalty on their trade list (retail) price per copy of each book thereof sold by them. The trade list (retail) price which is to be taken as the basis for this percentage shall be that of the cloth bound copies."

There are some other provisions:

"Where copies are sold for export at a reduced price, the royalty shall be calculated on the amount actually received instead of on the retail price."

Q. Does the publisher sell cheaper in Canada than the United States?—

A. He naturally sells to the Canadian publisher a little cheaper, because the Canadian publisher has to buy it and resell it.

Q. As a result, the Canadian author would get less royalty than he otherwise would?—A. As a rule, where the book is made in the United States, yes. Take a \$2 book for instance, and a 10 per cent royalty. The author would get twenty cents a copy, on every copy sold in the United States. If that American publisher sold copies in Canada, sold an edition to a Canadian printer, he would get perhaps seventy cents for it at the present time, so the author would get ten per cent of seventy cents, or seven cents, instead of twenty cents, if his agreement was made with the American publisher. When you consider the American publisher, you must consider the size of their market and the volume of business they have. Then again, you must consider the advantages they have in owning magazines. Nearly all of these publishers, already have magazines, and those who have not would like to have them, because they must get advertising for their books, to sell them, and they get it cheaper by having a magazine.

Q. As far as the author is concerned, it would be better to have it published in Canada and the United States, to have it printed in both places?—A. The ideal agreement is for the author to sell American rights separate, Canadian rights separate, English rights separate, and serial rights separate.

Mr. HEALY: That is what she could do under the proposed changes.

Mr. CHEVRIER: You would have to take the licensing clauses out in order to do that.

By Mr. Ladner:

Q. In a word, would you leave the licensing clauses as they are?—A. We have not had enough experience to change them, really.

Q. We are called upon to decide, in the interests of the public, whether or not to cancel these licensing clauses. Do you say cancel them or not?—A. I would say do not cancel them, but increase the provision to 2,000 copies. I say that after discussing it with Mr. Musson, the head of our firm.

By Mr. Chevrier:

Q. Is this the third time you want to change your evidence?—A. I have explained that your bill is ideal from an author's standpoint, from the standpoint of the owner of the copyright. I have pointed out that the publisher is frequently the owner of the copyright; he pays all the cost, he pays for the registration, and we have talked to our lawyers about registration and they say registration is not necessary, but it is advisable.

Q. Of course it is advisable. Now you are talking about something else, and you said a moment ago that it would be an ideal system where everybody could have his Canadian rights and British rights and American rights and dispose of them as he felt he ought to do?—A. No sir. I did not say it would be an ideal situation, because that situation exists now. I did say the author would make more money if he did that.

[Mr. F. F. Appleton.]

Q. Then you say that if the author could sell his rights individually he would make more money?—A. Individually, yes.

Q. Now then, we have the licensing clauses, and the effect of the licensing clauses, therefore, is to prevent the author from making as much money as he would if the licensing clauses were not there. That is the necessary deduction from what you said.—A. I did not quite get that.

Q. You said that if the licensing clauses were not there, the author would make more money. If the licensing clauses were not there, he would be able to make more money.—A. No, I did not say that.

Q. What did you say?—A. I said that if the author sold his rights, if he sold his rights in each country to different publishers.

Q. Then let us go on with that.—A. Let me explain that, if you will.

Q. You say that if he could sell his rights in each individual country he would make more money?—A. Yes.

Q. The reason why he cannot do that is because the licensing clauses are in the law. Is that right?—A. No.

Q. Why cannot he sell his rights to another country if he wants to do so?—A. There is nothing to stop him from selling to any country.

Q. That is true, but do not split hairs. Because of the licensing clauses he cannot do it, because he has no control over the Canadian rights. Is that not right? Do you want to change your evidence again?—A. No, I do not want to change my evidence again; I want to clear this thing up. The licensing clauses operate in this way—

Q. Is it not because—A. Let me explain; I want this cleared. The author signs an agreement like this—

Q. I do not want to argue any more about this. Here is the point: You say that the system would be an ideal one where an author could sell his rights individually to any country he wanted to?—A. Yes.

Q. Whereby he could get more money. Is that right?—A. I said it was advisable for the author to do that to make more money.

Q. And there is therefore something in the law now which prevents him from making any settlement?—A. No, I did not say that.

Q. Why cannot he do it?—A. This agreement—

Q. It is not a question of agreement it is a question of law?—A. This is a question of law.

Q. What is there in the law which prevents him? That agreement is not in the law. There must be something in the law to-day which prevents an author from selling where he wants to sell, and therefore prevents him from making more money. Is that not what prevents him?—A. He might desire to sell to somebody in ignorance of the facts. This is a business transaction. It is not in your Copyright Act.

Q. You will want to change that evidence to-morrow again?—A. No, I won't; I am giving you the facts.

Mr. LADNER: The witness has made his correction.

Witness retired.

The Committee on motion of Mr. Ladner adjourned until to-morrow at 10.30 a.m.

THURSDAY, March 26, 1925.

The Special Committee appointed to consider Bill No. 2, An Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, Ladner, Lewis, McKay, and Rinfret.

In attendance:—Mr. O'Halloran.

The CLERK: I have a communication which Mr. O'Halloran desires to have placed before the Committee. It is from the Canadian Booksellers' and Stationers' Association, and reads as follows:—

“Controller of Copyright,
Department of Agriculture,
Ottawa, Ont.

DEAR SIR,—

“At a meeting of the Executive Committee of the Canadian Booksellers' and Stationers' Association in Toronto to-day the following resolution was adopted:

“(a) Whereas we understand that amendments to the Copyright Act are now being considered and whereas we believe that the interests of the general public have been seriously overlooked in the copyright legislation of the past, we request that representatives of the Booksellers of Canada be given an opportunity of appearing before the Committee at this time, with the object of showing that the interests of the public have not only been neglected but seriously invaded.’

“(b) That a copy of this resolution be forwarded to Ottawa at once with the request that such an invitation be sent through the President of the Canadian Booksellers' and Stationers' Association.’

“May we bespeak for this request your prompt consideration, preferably by wire addressed to the Secretary's office as above.

Yours very truly,

THE CANADIAN BOOKSELLERS' AND STATIONERS'
ASSOCIATION,

(Sgd.) A. H. JARVIS,
President.

(Sgd.) F. A. WEAVER,
Secretary.”

Mr. O'HALLORAN: On receipt of that letter yesterday afternoon, I wired the Secretary of the Association that the bill was not a government measure, that it was introduced by a private member, and that the government had no control of it. I stated that I would like to lay his letter before the Committee at its meeting this morning, and I have done so.

Mr. CHEVRIER: In that connection, I may say that I have had a number of communications from a society known as the American Society of Composers, Authors and Publishers. They have written repeatedly on exactly the same point as Mr. Ladner raised yesterday, as to whether music is free in the United States. They have written asking or suggesting that they be heard in

order to give evidence as to the actual state of the law over there. I do not know whether the Committee wishes to bring them here—

Mr. McKAY: At their own expense?

Mr. CHEVRIER: At their own expense, surely. These people are very anxious to come and place their views before the Committee.

Mr. LADNER: Whom do they represent?

Mr. CHEVRIER: They call themselves the American Society of Composers, Authors and Publishers.

Mr. LADNER: How representative of authors is that organization?

Mr. CHEVRIER: They are quite representative of authors, composers and publishers. They say:

“We are confident that it would serve all interests concerned, including your government, to the best advantage if we might be invited to appear at your hearings; and should we receive such invitation, you are assured of its immediate acceptance for whatever date and time may be set.”

I do not know whether the Committee wishes these gentlemen to come.

Mr. LADNER: I would move that they be asked to attend.

Mr. CHEVRIER: I would be very happy to second that.

Motion agreed to.

Moved by Mr. Ladner, seconded by Mr. Chevrier that representatives of the American Society of Composers, Authors and Publishers be requested to appear and give evidence on Monday, March 30, 1925, at 10.30 a.m.

Mr. LADNER: There is another point which I think might facilitate our work. In regard to these contentious clauses, affecting radio and licensing. Our course of action might be considerably influenced by the provisions of the Berne convention which cannot be changed. I think, therefore, it would be helpful if we had from the department, or from Mr. O'Halloran, a memorandum containing the state of the law or the provisions in the convention as they affect the licensing clauses and the radio clauses.

The CHAIRMAN: Perhaps Mr. O'Halloran will furnish us with that.

Mr. O'HALLORAN: I am prepared to make a statement in regard to Mr. Chevrier's proposed amendment of the section affecting broadcasting, not as it would affect the Berne convention, but as it would affect our arrangement with Great Britain, which is more important.

Mr. LADNER: Could we have both?

Mr. O'HALLORAN: I do not see at the moment that there is anything in the Berne convention to affect that.

The CHAIRMAN: Would you be prepared to make that statement this morning, following Mr. Robertson?

Mr. O'HALLORAN: Yes.

The CHAIRMAN: Is it the pleasure of the Committee to hear Mr. O'Halloran, after we have heard Mr. Robertson? (Carried.)

E. BLAKE ROBERTSON recalled.

By the Chairman:

Q. Whom are you representing?—A. At the preliminary stage I am speaking for the radio interests. The charge was made last Friday that evidence given by the radio interests was in pursuance of a campaign aiming to mislead the Canadian Parliament—

Mr. CHEVRIER: Mr. Chairman, I have no objection to Mr. Robertson giving evidence, but if Mr. Robertson is going to argue—

The WITNESS: I will plead “not guilty”—

Mr. CHEVRIER: Just a moment, please. If Mr. Robertson will argue, if Mr. Robertson will go over the evidence, if Mr. Robertson will cast judgment as he did the other day, I object. I understood from Mr. Robertson that he had a statement to make, a copy of which he gave me, and I understood from him that was all he had to say. If what he has to say is limited to that statement which he gave me, I am satisfied, but if he will start the game of arguing over the board, reviewing the evidence, which he has no right to do, I object. I have enough common sense—I may not have much—but I have enough common sense and brains to appreciate the evidence myself, and I think the Committee may have much more than I, and they, too, are in a position to appreciate the evidence without being coached by somebody who is not a member of the Committee.

The WITNESS: Am I to understand, Mr. Chairman, that a witness may appear before this Committee and attack the veracity and honour of previous witnesses and then these previous witnesses are debarred from replying? That is the situation in which I find myself. A witness appeared before this Committee and stated that the evidence which the radio interests had given was in pursuance of a campaign aiming to mislead the Canadian Parliament.

By Mr. Hocken:

Q. Who was the witness?—A. It was Mr. de Montigny who made that statement. I am quoting his exact words: “That the evidence given by the radio interests was in pursuance of a campaign aiming to mislead the Canadian Parliament.” All I am desirous of doing is to plead, on behalf of myself, and on behalf of the interests with which I am associated, “not guilty” to the charge, and to offer a very few brief reasons in substantiation of my plea of not guilty. It would take me much less time than the interruptions consumed, to say all that I have to say.

Mr. LADNER: I suppose we would really gain more time by letting the witness go on in his own way, providing he does not go too far from the mark. I think, sitting as we are as a semi-judicial body, that this evidence should be given.

The CHAIRMAN: I think if the witnesses are not interrupted in giving their statements as far as possible, we would get along quicker, but of course, it is understood that the witness shall simply give evidence and not enter into an argument. I think, Mr. Robertson, you will understand that.

The WITNESS: But denying a statement is not an argument.

Mr. HOCKEN: I think we had a pretty good argument for the other side.

Mr. IRVINE: I would like to offer the observation that a number of witnesses have presented arguments to this Committee, and I did not object, anticipating that perhaps a situation like this might arise. I think the evidence of Mr. de Montigny also was an argument, and I think we should hear the reply of Mr. Robertson.

Mr. CHEVRIER: How long is this going to continue?

Mr. HOCKEN: Right along.

Mr. IRVINE: A couple of hours.

Mr. CHEVRIER: That is what I want, and I do not think it is subject to a joke. If Mr. Robertson has the right to come in and reply then I have the right to bring in somebody else and if this will continue in that way I am "game" to continue it until next September. This state of affairs is not my work. When we started to hear evidence I quite properly at that time pointed out that the onus was on the other side to show why this clause should not go through. It was the wish of this Committee that the ordinary, common-sense practice should be upset, whereby I should be called upon to prove a negative, and those who started should have the right to reply. I am now being denied the ordinary, elementary principle of justice. I have to start to give evidence. After I give all of my evidence, then those who should have started come in and are allowed to contradict. That is all right. But now I am being denied the right to reply. Mr. Robertson consistently and persistently comes in with a reply to every argument, and so long as Mr. Robertson gives evidence I will exercise my right to ask that I may be allowed to reply to him. If he is going to reply to me, I shall reply to him, and if you want to keep this up until September, I am ready.

The CHAIRMAN: It is not my intention, and I am sure not the intention of the Committee to deny you any right or privilege that may belong to you. There is no thought of that in anybody's mind. The only thing is it seems fair, if Mr. Robertson has any additional evidence to lay before the Committee, that he be permitted to lay it, and I think you could trust to the good judgment of the Committee to receive what is applicable and discard what is not applicable.

Mr. CHEVRIER: But if there is anything that arises out of Mr. Robertson's evidence, will I be given the same right to reply to that?

Mr. HOCKEN: Surely.

Mr. CHEVRIER: All right.

Mr. HEALY: I think witnesses should be limited to sixteen appearances before this Committee.

Mr. LADNER: I think thirteen would be a more lucky number.

The CHAIRMAN: We will proceed and see if there is anything exceptional in Mr. Robertson's evidence.

The WITNESS: The charge was made last Friday that evidence given by the radio interests was in pursuance of a campaign aiming to mislead the Canadian Parliament. On behalf of those who have spoken for the radio interests I wish to plead "not guilty". Evidently the charge of attempting to mislead Parliament hinges on two sentences in a brief mailed from Toronto on March 2nd, reading:

"The amendment to the Act seeks to have it written into the Statutes of the Dominion that broadcasting shall be termed a public performance for private gain. This contention is denied by every other country where the composers and authors have sought to have this interpretation of the Copyright Act legalized."

Those are the sentences to which I suppose particular exception is taken. Now, what justification was there for that statement? Although attempts have been made by the authors to obtain better broadcast control, and by broadcasters to secure free air, I am unable to find that any legislation on the subject either way has been passed in the United States since 1909, in England since 1911, or in Australia since 1914, these countries being specified as they

are the ones with which authors' witnesses have particularly dealt. The situation in the United States is by no means as clarified as authors claim. They lost their case against WLW. They lost their case against WGY, and the Bamberger & Company case is alleged to have been a friendly suit where a free license was promised if Bamberger & Company lost. The judge suggested an appeal but no appeal was taken. It is therefore unfair to say that there exists in U.S.A. precedents which set at rest all disputes on the question. It is likewise unfair to allege that radio interests have made any attempt to mislead Parliament; their sole desire is that the Committee should have all the facts on which to base their conclusions regarding legislation which should be enacted. That is the only point to which I think Mr. Chevrier will take objection.

By Mr. Chevrier:

Q. Do you know whether any rates are asked in the United States for broadcasting?—A. I am informed there are 600 broadcasting stations in the United States and approximately 20, possibly temporary, are paying fees. I am likewise informed that the other 580 are not. I know positively in several cases they are not paying, and they say, "As soon as you think you have any rights, come on through the courts."

By Mr. Ladner:

Q. Will you give us the source of that information?—A. It is from the broadcasting stations, and when Mr. Mills arrives he would be just as biased as the broadcasting stations—

Q. No. You say there are 600 broadcasting stations, 20 of which are paying; if you don't mind, we would like to know the source of your information in order to be able to estimate it?—A. The source of my information is one of the stations which is not paying, and when a request is made for them to pay, they say, "If you think you have a case; if you think the law of the United States covers the ground, proceed through the courts."

By Mr. Rinfret:

Q. Why should these 20 stations be paying?—A. Some people would sooner pay a small amount than incur litigation.

By Mr. Chevrier:

Q. Oh, there we are; then the law is not so clear?—A. I did not claim the law was clear; it is you who was claiming the law was clear.

Q. You said it was free music?—A. Your witnesses, on the other hand, say there is absolute control. I say the situation is hazy, and Mr. Mills should be in a position, when he comes here Monday, to give you fairly accurate information in that he is the chairman of the executive who makes the demand on the stations.

By the Chairman:

Q. Who is Mr. Mills?—A. He is, I presume, the witness who will be here Monday.

By Mr. Ladner:

Q. Of the American Authors' Association?—A. The Music Publishers' Association.

By Mr. Rinfret:

Q. You mean the publishers— —A. The name is "Authors', Publishers' and Music Composers'." I would hazard the guess, even though under oath, that a majority of the proceeds was paid used by the publishers and was not secured from the authors.

By Mr. Healy:

Q. You heard Mr. Thompson's evidence?—A. Yes.

Q. What do you think of that?—A. I think it was very clear. As a matter of fact, what I am to present to you now was written before Mr. Thompson arrived, and was shown to him before he went on the stand. It agrees in almost its entirety with what he says, and in my evidence I am only adding a few words which expresses a conclusion arrived at in a conversation last night and which he thought should be included.

By Mr. Chevrier:

Q. In what respect did Mr. Thompson's views differ from yours?—A. When I come to that part I will point it out.

May I direct the Committee's attention for a moment to some very important evidence given Friday last. His Honour Judge Constantineau suggested that a portion of the license fee collected from receiving sets should go into a fund out of which copyright owners should be reimbursed for works used for broadcasting. Mr. de Montigny speaking only for himself approved of regulated royalties for broadcasting and cited the case of Australia where a portion of the license fees is distributed to copyright owners. The Canadian Music Publishers and Dealers Association, which represents almost in its entirety the music copyrights controlled in Canada, in the brief presented said:

"We favour a system whereby say 10 per cent of the fees collected by the Government both from receivers and broadcasters be distributed to composers in proportion as their works are distributed by radio stations."

I was so much impressed with these proposals as a solution of the difficulty confronting this Committee and Parliament that I suggested to the Radio Trades Association that while still pressing for the amendment for which they have asked, they should at the same time express their approval of the division of fees as a method of reimbursing composers. In answer, the association takes the stand that the primary question which must be solved is whether ultimately the cost of broadcasting is to be borne by the Government, the broadcasters or the receiving public, and that until that question is settled they hardly felt justified in making a recommendation. They point out, however, that the granting of their present request in no way debars the Government from dividing a portion of the license fees should the Government at a later date decide that that method is the best solution.

Speaking personally I was much impressed with the claim of authors and music publishers that they should have full power to prohibit broadcasting of their compositions when for any reason such was their desire. These points were likewise stressed yesterday by Mr. Gordon V. Thompson.

The Committee could meet the just claims of all the conflicting interests, regarding radio:—

- (1) By adopting Mr. Chevrier's definition of "performance".
- (2) By adding to Section 3 (1) of the Copyright Act 1921 the following:—
"Provided that copyright control shall not extend to public performances of works where such performance is by use of the radio unless the work performed has prominently marked thereon the words 'broadcasting prohibited'—"

to which Mr. Thompson wishes to add:—

“—unless the broadcasting station giving such performance has received definite notification of prohibition from the copyright owner of such work”.

(3) By recommending to Parliament the amendment of the Radiotelegraph Act to provide that under regulations made by the Governor in Council 10 per cent of the fees now collected from broadcasting stations and receiving sets be divided among the copyright owners of registered works utilized for broadcasting.

Following this course would recognize the author's rights by allowing him to absolutely withhold his works, or to conditionally withhold for certain periods of time or from certain areas. It provides likewise for payment when broadcasters utilize works, the use of which has not been forbidden. The procedure would undoubtedly leave to broadcasters abundance of works to permit them to carry on uninterrupted the public service they are now performing at no direct cost to the public. The only way in which I changed this brief, after Mr. Thompson's evidence and my conversation with him, was to add the other proviso that broadcasting might be prohibited by letter instead of being marked on the music. Now, Mr. Thompson cited the case of *The Dumbells*. He is quite satisfied, in controlling that music, that it shall go on the air immediately after the *Dumbells* get this side of the Rockies.

By Mr. Ladner:

Q. A composer would have to write to all these broadcasting stations?—

A. He would not have to.

Q. He would if he wanted to stop broadcasting?—A. No. If he wanted to stop that, he would put “Broadcasting prohibited” on the sheet music. Supposing he said to himself, “I want broadcasting, but not until after the 21st of September,” he would put “Broadcasting prohibited until September 21st”.

By Mr. Chevrier:

Q. Supposing he wanted to recall it; he would have to get back every confounded sheet of music on the market bearing that mark “Broadcasting rights prohibited”. Supposing he wanted to call it back?—A. No; he could issue a circular later saying, “You are free to use”.

Q. Supposing he says on this sheet of music, “Not to be broadcasted until the 1st of July, 1925”—A. Yes.

Q. —and after that, for some reason or other, he wanted to stop the broadcasting of that; he could not stop it unless he communicated with every station. He has lost his right of control in his own work. I have no objection if he sells it outright; then it is a bargain, and it is sold and gone; his right of control is gone, but if he does not want to absolutely sell his right of control, there is no alternative under that system but to put on there “Not to be broadcasted until—” a certain date.

MR. LADNER: Suppose he filed a restriction with the owner of the copyright, that would place the onus on the broadcasting station to find out.

MR. CHEVRIER: I know you are very anxious to save the rights of ownership, but it would be better for him if you would say he would have the right to say whether he would accept a royalty of two cents for his song, or whether he will not let it be sung at all. To my mind that is the shortest way, the clearest way, and the most satisfactory way of saying to an author, “You will have the right to say whether you will let this song go for two cents royalty, or whether you will not let it go at all, or whether you will let it go free.”

THE CHAIRMAN: That would be expressed in the copyright.

Mr. CHEVRIER: Again let me repeat in all honesty and sincerity that the end is achieved by what is in the Act. The royalty will be fixed by the Governor-in-Council, and so far as I am concerned now, I can say if the Governor-in-Council will fix the royalty at one cent, I am satisfied.

The WITNESS: There is no provision in the Act allowing the Governor-in-Council to fix the royalty.

Mr. CHEVRIER: Surely my hon. friend is not devoid of appreciation to that extent. This Committee can see, following the evidence of Mr. de Montigny, that we recommend the Governor-in-Council shall have the right to add to the regulations already in force, and in those regulations the Governor-in-Council may make a regulation stipulating the amount of the royalty. If this Committee wants to, we can say this, and recommend that this royalty be one cent, or that it be commensurate with the value or the renown or the name or fame of the broadcasting station, when that station broadcasts for profit, but if it broadcasts for no profit, if it is amateur, and no profit accrues in the broadcasting station, they do not have to pay anything.

Mr. HOCKEN: Would you call "La Presse," an amateur station?

Mr. CHEVRIER: By no means

Mr. HOCKEN: Do you think they are broadcasting for profit there?

Mr. CHEVRIER: Undoubtedly so, and if I were speaking under oath I would make the same statement.

Mr. HOEY: What about the Manitoba government station?

Mr. CHEVRIER: I cannot say as to that. I would presume that if a government takes over a station—it would of course depend upon the nature of the work which they broadcast, and it might be difficult to say that they operate for a profit. It might be a profit resulting to somebody, resulting to the country at large. But that is not the profit I mean. It is remuneration for the work which they broadcast, and "La Presse," notwithstanding what has been said, is undoubtedly making a profit.

Mr. HOCKEN: Do you think that would be shown in their report?

Mr. CHEVRIER: Yes.

The CHAIRMAN: I think we will now let the witness proceed.

WITNESS: I am finished.

By Mr. Irvine:

Q. Do you think, Mr. Robertson, that in the bill as proposed by Mr. Chevrier, it is clear who are to pay this royalty?

Mr. CHEVRIER: Not now, because I have not made any statement as to whom is to pay it. I say that the Governor-in-Council may make regulations as to whom, where, when and how much royalty may be paid.

WITNESS: I would think that the performer and the station would be both liable; jointly liable, or severally liable.

By Mr. Irvine:

Q. There is a good deal of interest on the part of authors in this; do you not think that there is also an interest on the part of the radio people?—A. The radio people seem to be taking quite an interest in it.

Mr. CHEVRIER: Most decidedly. They are raising all this noise.

Witness retired.

The CHAIRMAN: What is the Committee's wish in regard to hearing a statement from Mr. O'Halloran?

Mr. LADNER: I move that we hear Mr. O'Halloran's statement, but that the same do not form part of the reported evidence, it being understood that Mr. O'Halloran is to furnish us with a memorandum covering some of the essential features of the law that we may require.

Mr. Irvine seconded.

Motion agreed to.

Discussion followed.

The Committee adjourned.

MONDAY, March 30, 1925.

The Special Committee appointed to consider Bill No. 2, An Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Irvine, Ladner, Lewis, and McKay.

In attendance:—Mr. O'Halloran, Commissioner of Patents.

The CHAIRMAN: We have some communications.

The CLERK: We have six telegrams addressed to the Chairman, Mr. Raymond, and two letters addressed to the Prime Minister, which have been transmitted to the Chairman. These eight communications support the Authors' Association regarding the repeal of the licensing clauses. We have also six other letters which were transmitted from the Prime Minister's office to the Department of Trade and Commerce referring to the radio industry. We have also a communication from Leo Feist Limited, Toronto, G. V. Thompson, general manager, suggesting an amendment to section 18 of the Copyright Act. I have also a rather lengthy communication here from Mr. Henry T. Jamieson, who appeared before the Committee representing the Canadian Performing Right Society.

Mr. LADNER: Is that organization connected with the English organization?

Mr. CHEVRIER: They are endeavouring to form a branch of the English Performing Right Association.

Mr. LADNER: What is the purpose of the letter?

The CLERK: Perhaps I may read the first page. This letter is addressed to the Chairman, W. G. Raymond, Esq. (Reads.)

"Referring to my evidence as recorded in 'Proceedings and Evidence,' No. 4, dated Tuesday, 17th March, 1925, page 138 (top), being cable received from Performing Right Society, London, and quoted by me, and also referring to page 139, question by Mr. Ladner, who asked,

'Q. In what respect would the radio free broadcasting be an infringement of the Berne Convention?

'A. That is the statement of my principals which I submit for what it is worth.'"

Perhaps the whole letter may be printed as an appendix to the proceedings.

I have also a communication from Whaley, Royce and Co., Limited, Toronto, stating:—

"With reference to the proposal suggested by Mr. E. M. Berliner of Montreal, and which is outlined on page seventy-four, of Number Three of the 'Proceedings and Evidence,' re—Bill Two, now before your Committee, we wish to state emphatically, that we do not as a company, agree at all to the following suggestion:

"That the provisions of this Act, in so far as they secure copyright controlling the parts of instruments serving to reproduce

mechanically, musical works, shall apply only to compositions published on or after January 1st, 1924, and registered for copyright in Canada.'"

This may also be printed as an appendix.

Mr. CHEVRIER: I have received a communication from the secretary of the Musical Publishers' Association, Limited, 9a Sackville street, Piccadilly, London, which reads as follows:—

"I am requested by my Committee to write and inform you that they most heartily approve of Bill No. 2 which is now before the Canadian House of Commons to amend certain provisions of the Copyright Act, 1921, and they sincerely hope that the House will approve and pass the said Bill into law at the earliest opportunity.

(Sgd.) C. J. DIXEY,
Secretary."

The CHAIRMAN: When we adjourned, I think we were discussing section 5 of the bill. We have several gentlemen here this morning to give evidence.

Mr. CHEVRIER: I have Mr. Justice Surveyer of the Superior Court, Montreal; and Mr. Nathan Burkan, General Counsel of the American Society of Composers, Authors and Publishers, and Mr. Julius C. Rosenthal, General Manager of the same society, are also present. I would suggest that Mr. Justice Surveyer be heard first.

The Hon. EDOUARD FABRE SURVEYER called.

By Mr. Chevrier:

Q. Your Lordship, I understand you are the president of the Montreal section of the Authors' Association?—A. I am the president, strange to relate, of the English section of the Montreal Branch of the Canadian Authors' Association, and I also am second vice-president of the French section.

Q. And you feel that the Canadian authors have a direct interest in the bill which I have introduced, which is now before this Committee?—A. I may say that I have been a member of the copyright committee of the association for four or five years, at least since the passing of the law of 1921, if not before, and I am also a member of the national executive. Personally I have no axe to grind. I do not claim to be an author, by profession, and as long as my duties remain as onerous as they are at present, I am not hoping to find time to produce worthwhile books. I have, however, a certain experience in writing newspaper articles, and for legal periodicals or others. I have been the editor of a monthly legal periodical for 26 years and have had some experience with printers. If I did not think that the law, as it stands, is detrimental to authors, to the authors who have honoured me by electing me as their president and appointing me to their committees, I would not be here; in fact, if I were not sure of it, I would not be here.

Q. We are discussing section 5 of the bill which asks for the repeal of what is commonly known as the "licensing clauses." Have the authors whom you represent any interest in asking for the repeal of these clauses?—A. I have no doubt in my mind that the authors have the greatest interest in the repeal of these clauses. I have been dealing with these clauses off and on for four years, and I am sure that a continuation of these clauses on the statute book will harm literary productions in Canada, and I am also satisfied that it has already harmed literary productions in Canada.

By Mr. Hocken:

Q. In what way?—A. There is nobody more sensitive than an author, especially if you include amongst the "authors" musicians and artists of all kinds. The moment he thinks he has no interest in publishing, he will not publish, and the country will lose that asset.

By Mr. McKay:

Q. Excuse me, Your Lordship, but what do you mean by the word "interest"?—A. Well, the moment he thinks that he will not have a square deal——

Q. You refer to it financially?—A. Financially and otherwise. If you will look at the March number of "The Bookman", at page 50, you will see an article by Mr. Robert Watson. He asks the question "Do Canadian Authors Get a Square Deal," and he concludes in the negative. If it grows in the minds of the budding authors that they will not get a square deal, they will not become authors; they will remain as they are, or take up some other occupation.

By Mr. Irvine:

Q. You are thinking of the "pot boilers"?—A. I am thinking of the good works as well as what you call "pot boilers."

Q. Do you mean to say that if an author had something he wanted to write about, he would refuse to write about it because he could not sell it?—A. That might happen. There is nobody as sensitive as an author, as I said before.

Q. It would be a good thing if it did happen and he did not write?—A. If it is not worth writing, it would not be published, whether he wanted it or not.

Q. The only reason that an author writes is because he can sell it? It might be a good job if he did not write it?—A. That might not be the only reason, but if he sees he is disregarded even amongst the legislators who are supposed to be well informed of the needs of the country, he may give up the profession, regardless of his talent or of the message he might give to humanity.

By Mr. Ladner:

Q. Your Lordship, would you distinguish in the attitude of the authors the ethical side of the question as apart from the purely financial side? That is, do the licensing clauses in fact injure the authors financially? That is one aspect of the question. What would be your opinion on that?—A. I am satisfied that they do, Mr. Ladner. It is a difficult thing to calculate in dollars and cents. But let me take an example: supposing I have properly patented an article, say, a corkscrew—which is useful. If I sell my rights to an American manufacturer, for a royalty or otherwise, that American manufacturer will have the right to manufacture and sell that corkscrew to the exclusion of everybody else in Canada or elsewhere, but if there is a licensing clause in Canada whereby the Canadian manufacturer might take my invention away from the American manufacturer, as far as the Canadian market is concerned, the American manufacturer will give less for that corkscrew, or for any invention, than he would if Canada were free.

Q. Would you distinguish dealing with this financial and material side, between the licensing clauses as applied to serial stories in magazines on the one hand, and books on the other hand?—A. Mr. Ladner, as far as I am concerned, I can only remember hearing discussions regarding books. The magazine question did not dawn upon me until I read the evidence adduced before this Committee, and I am not prepared to give an answer which would be binding. I do not know that I could even surmise. However, I am open to conviction.

Q. Supposing the licensing clauses as they affect the authors in the publication of books were eliminated, but retained as they affect the authors in the publication of serial stories in magazines. You say you would prefer not to express an opinion on that?—A. If you ask me my personal opinion, Mr. Ladner, at first sight I would say that I would advise a compromise and let the licensing clauses apply to magazines.

By the Chairman:

Q. Has Your Lordship read Mr. Robertson's evidence?—A. I do not know whether I have read it all. There were some parts which concerned the radio, and I am not prepared to answer questions regarding the radio.

Q. I think perhaps I was mistaken in the name— —A. If you were referring to Mr. Harrison and Mr. Mackenzie, I would say I have read them.

Q. They gave us some light on the question of the publication of serials?—A. Yes, and I thought that after reading that evidence, I should not express an opinion offhand.

By Mr. Hocken:

Q. Do you know of any author who has suffered financially by reason of these clauses?—A. I do not know how many books were offered to American publishers since the law has been in force.

Q. But do you know of any author who has suffered?—A. I would say in every case he has suffered. I would say if I bought a book with a string attached to it, I would pay less than if I bought it outright.

Q. Can you give me the name of one who has suffered?—A. Oh, I have not investigated all the authors.

Q. So you are simply making a general statement?—A. Yes; it is plain common-sense that if you buy something with a string to it you do not pay as much as if you bought it outright.

By Mr. Chevrier:

Q. Do you know of any printer who has benefited by it?—A. I have not followed the printers. I do know this, however, that I was very much surprised to see in Mr. Haydon's evidence that even with the plates imported from the United States there was some appreciable benefit to the printers. I always have had a certain amount of sympathy with the typesetters; they are by avocation the most intelligent of manual workers; they have to know how to spell, and to know grammar, and I can remember the days when the typesetters gave us hints as to how we should write, and I was surprised to hear that even with the typesetting removed from the question, and the plates imported here and bodily set in the presses without change, that there was benefit accruing to the printer. It seems to me this clause was very well characterized at the beginning of this discussion; you (Mr. Chevrier) called it "a club," one of the witnesses called it "the big stick." It is nothing but a threat, and every threat is dangerous, and "threat" is a mild word for it.

MR. CHEVRIER: I have no further questions to ask the witness, Mr. Chairman.

By the Chairman:

Q. Have you any statement you would like to make to the Committee, Your Lordship?—A. There is one statement which I might make. I think these clauses are fundamentally and morally wrong because they affect the most sacred of all rights, that is, the right of ownership. The right of ownership is the most absolute, complete, and purest right we have; it comprises the right to use one's own product for one's own self; the right to derive the benefit of one's work, which may or may not be affected by these licensing clauses, and the right to destroy that which is affected by these licensing clauses. You cannot sell outright to the American publishers, and you cannot either modify your work or take it away from your market, except you buy the whole edition, as Mr. Kelley said in answer to Mr. Chevrier. Take the case of an author who has become famous, he is ashamed of his earliest works, either because they contained principles which are fundamentally wrong and which he repudiates now, or because they are not equal to his present reputation, and he would be

glad to see these works disappear altogether. A publisher might think fit to use that man's name, which has become an asset or an advertisement, to republish these early works because they will sell, even though they are a disgrace to their author. He may insist upon publishing an edition of a work while the author has already made improvements and corrections. He may publish that work in a type or manner which does not suit the author. I might quote a passage from the last number of *The Bookman* as to what really happened lately. This is in connection with a work called "Nipsya," a French work, written by a Frenchman domiciled in Canada, and published simultaneously in France and Canada. Here is what *The Bookman* says:—

"The two columned sheet paper booklet with melodramatic though fitting and forceful illustrations by Albert Fournier is of the dime novel type, which at first repels the conservative reader."

If these clauses are in force our publishers will be able to produce books of the dime novel type with such illustrations as they see fit, whether they suit the style of the author or not, and exclude the selling and dissemination in Canada of the better class editions. Likewise, it seems to me that this law is simply to enable the publishers to make a good bargain. I have listened to Mr. Mackenzie's statement regarding Martha Ostenso's book "Wild Geese." Having used these licensing clauses he thought he was able to make a good deal with the American publishers—with the American owners of Martha Ostenso's book. That does not help Martha Ostenso a bit. If the licensing clauses were compulsory there might be some of interest to the authors, but we have seen by Mr. Mackenzie's own testimony that publishers can avoid licensing clauses by making a bargain with the American publishers and, therefore, there is no interest in the licensing clauses for these authors. On the whole, I think it will harm literary and artistic productions, and with all due respect to the publishers who ought to know their business, even though they are in the minority, I do not think it will affect them particularly well. It may affect two or three houses, but you may prevent the publication of 100 books a year, and that is an asset we cannot afford to lose.

By Mr. Ladner:

Q. I presume, Your Lordship, on the theory of interference with the rights of authors, which is perfectly sound—supposing the rights of the authors, although technically interfered with, were restricted in some way. That would prove a great advantage to the nation as a whole, without any injury to the authors. You would not agree with me that a technical interference like that would be justified?—A. If it does interest the nation as a whole, I think the author ought to give an example of patriotism; if it is to assist two or three publishers or jobbers that you harm literary or artistic productions, the nation as a whole is with the authors and not with the publishers.

By Mr. Lewis:

Q. Did I understand you to state that they might take any edition under the licensing clauses and reprint the book?—A. Well, there is a period of five years in there and I would not like to say definitely.

Q. I understood you to say that it might not be the last edition of a man's book?—A. They might print an early work of an author which has no value except a commercial value because the author has gained fame afterwards, and would hurt the reputation of that author by reprinting that book, or they might publish an edition of the book which is not an edition which the author would want published, if he has a second or subsequent edition on the tapis.

Q. They could not do that under the licensing clauses. It says:

"To print the same from the last authorized edition of the book in such manner as may be prescribed by the Minister, in full, without abbreviation or alteration of the letter press, and without varying, adding to, or diminishing the main design of such of the prints, engravings, maps, charts, musical compositions, or photographs contained in the book as the licensee reproduces."

A. But they are not pledged to print the next edition, the edition which is in the author's brain or his studio.

Q. You could not expect them to do that?—A. No.

Mr. IRVINE: You cannot print a book before it is written.

By Mr. Hocken:

Q. Does not the licensing clause simply provide for this: That the Canadian author writes a book and sells it to the States; the licensing clause provides for the publication of that book in Canada; the author has the first opportunity to do that; his publisher has the second; but if neither the author nor the publisher will publish in Canada, then somebody else may do it, by paying him a fair price? Is that not really the licensing clause?—A. If the author sells his rights to an American publisher, it is because he cannot publish himself at a profit; he has not the canvassing staff at his disposal; he has not the advertising means at his disposal, and the publisher may publish it in any manner he wishes, with illustrations that degrade it, or in a cheap edition, or in any way he likes, and the author has nothing to say about it.

Q. But a Canadian author writes a book, and naturally he sells it to the American publishers, because he gets a better price and because it is a better market?—A. Yes.

Q. There is nothing in the law to prevent that; he could sell that book outright or he could sell it on a royalty basis?—A. I understand so.

Q. He can do that by this licensing clause, and he can square himself usually with the American publisher by giving the American publisher any royalty he may get from the publication of his book in Canada?—A. Yes, but the American publisher would prefer to be sure of his own royalties and not rely upon the advertising and printing which the Canadian publisher does, to sell books in Canada.

Q. It is the American publisher you are thinking about?—A. If you depreciate the value of the book to the American publisher you depreciate it to the author, because the publisher will pay less for it.

Q. Then the purpose of the licensing clause, which is merely to have that book published in Canada, you think is not a good one?—A. No. It is merely a threat. It does not protect even the workman, the typesetter.

Q. We would like to have that done if we could go that far; we would then be on a parity with the United States. You cannot publish a book in the United States and get it copyrighted, until you set the type and make the book.—A. Yes; then you protect the workman.

Q. We tried before to get that manufacturing clause in this Act, but the authors thought that was a terrible thing.—A. It is, too.

By Mr. Chevrier:

Q. Are you aware, Judge, that there is a bill now before the American Congress to do away with the manufacturing clause in the United States?—A. Yes.

Q. Let us take this case now, a parallel case with that spoken of by Mr. Hocken. Supposing the writer of a book, instead of being a wealthy producer, is just an ordinary writer and has not the opportunity of having a publisher;

he must go to the printer himself to have his book printed, and he goes to that printer. He has to take the chance of printing his book; he has to pay the printer before he gets his book released?—A. Yes.

Q. And he has to take the whole chance of it, so is there not a very wide distinction between the budding author who has to go and peddle his book to any printer and make a bargain with him, so if he can get a bargain at an easier price in another country, he must of necessity do that if he wants to produce his book. If he can get it printed in the United States by a printer at a cheaper price than by a printer in Canada, he must of necessity go to the American printer. Isn't that the difference?—A. It seems to me the A, B, C of common sense.

By Mr. Lewis:

Q. Following up that question, do you mean to say an author at the present time can go to the United States and get a book printed cheaper than he could get it printed by our own Canadian printers?—A. I understand the cost of printing is cheaper in the United States than it is here.

Q. I understand it is in regard to volume, in regard to the larger market, but that is in regard to an author well known on the American continent, but to a man who is unknown, I cannot see— A. If he pays the printer, the printer will produce the book.

Mr. CHEVRIER: Take the case that Mr. Justice Constantineau spoke of the other day, when he said he wrote that book, "De Facto"; he said it cost very much less to print in the United States than in Canada.

By Mr. Lewis:

Q. Was that printed in the United States?—A. Yes, in Rochester. I understand one of the books of Ralph Connor was held up by the Customs because it was supposed to be under-valued, whereas it might have been valued at the price it had cost Ralph Connor or the printer to publish in the United States.

By Mr. Ladner:

Q. You mentioned a moment ago the control of the author over his works, so that it could be published in a form that would have the dignity and standard of publication he wanted. I notice the licensing clause states in section 13, subsection 5, and also subsection 9 (b) that the minister may control the terms and conditions under which the publication is issued, and it must be published to the best advantage of the author. The point I make there is that the publisher has not free scope to degrade the book at all?—A. Is that clause 6? I have the Copyright Act of 1921. Is that it?

Q. Yes, section 13, subsection 5.

Mr. CHEVRIER: Didn't Mrs. Macbeth answer that?

The WITNESS: Yes.

By Mr. Ladner:

Q. The wording is as follows:—

"the Minister in his discretion may grant to the applicant a license to print and publish such book upon terms to be determined by the Minister after hearing the parties or affording them such opportunity to be heard as may be fixed by the regulations."

Then further down, at subsection 9 (b) of section:

"to print the same from the last authorized edition of the book in such manner as may be prescribed by the Minister, in full, without abbreviation or alteration of the letterpress, and, without varying, adding to, or diminishing the main design of such of the prints, engravings, maps, charts, musical compositions, or photographs contained in the book as the licensee reproduces."

A. It gives a certain amount of protection.

Q. Supposing the author goes to the Minister and says, "Look here, this is a cheap dime novel this publisher wants to get out, and he has illustrations which appeal to the depravity of the mind, instead of to the higher conceptions, and I object," wouldn't that be a safeguard?—A. It is to a large extent a safeguard. It is not an absolute safeguard; it may not appeal to the author as a safeguard. I can understand it, because I have had dealings with Ministers, but authors may not realize it, and you must bear in mind that you cannot deal with the Trademark and Copyright Office except through agents, and the author would have to appoint agents in Ottawa. I have had that experience myself, and it is an expense, he would have to submit his case and incur the trouble of practically a lawsuit.

Q. The other point in subsection 12 of section 13, regarding the cancellation of a book where the author has changed his ideas, or where he wants to eliminate a former publication. It provides there that,

"If a book for which a license has been issued is suppressed by the owner of the copyright, the licensee shall not print the book or any further copies thereof, but may sell any copies already printed, and may complete and sell any copies in process of being printed under his license, but the owner of the copyright shall be entitled to buy all such copies at the cost of printing them."

A. What I cannot realize just now is how an author can suppress his book.

Q. How does he do it without the licensing clause?—A. How can an author say, "That book is suppressed; I cannot prevent the volumes that are sold from being distributed, from being bought, but I do not want to republish it again." To suppress it, if he does make a declaration to that effect, that he does not want that book to be republished and makes that declaration to the copyright office, would that be sufficient?

Q. Supposing you had no licensing clause; supposing section 13 was eliminated; how would you suppress or cancel it?—A. I would not republish it if I did not want to. In this case, you may republish it without my consent.

Q. Don't you think that clause also gives the right to the author to refuse to republish it; within certain limitations? I have just asked these questions to clear up the point.—A. In that sense the licensing clause would be inoperative, because if the author says "I do not want my book to be republished" then all the books that are on the market will be sold, and he will be incidentally helping the original publisher, and that is the argument that would be invoked by the publisher with the Minister, "that man does not want his book to be republished." Why? Because he does not like it, or because he wants to protect the American publisher as against the Canadian publisher. I am afraid we cannot deal with intellectual property as we deal with the ownership of tangible things.

By Mr. McKay:

Q. Do you not think the licensing clauses are designed to protect the Canadian publisher against the American publisher?—A. It is a battle between the two, and the author will be squeezed between them.

Q. Trade is always a battle.—A. Here it is at the expense of the author.

[Hon. Edouard Fabre Surveyer.]

By Mr. Irvine:

Q. Is it not so that when a Canadian author asks an American publisher to publish his book, that he finds the possible Canadian market enables him to have a better opportunity of selling his book to the American publisher?—A. Yes.

Q. That is so?—A. Yes. I think Mr. Kelley stated that very well in his evidence.

Q. It will follow that the Canadian author is using the Canadian market in a foreign country, as a means of selling his work there?—A. Yes.

Q. Therefore the licensing clause which we are now considering is not taking away any right of the author, but it is merely preventing him from exploiting our market to the advantage of selling his book. What about the Canadian market?—A. An American publisher might refuse to publish a book if he has not the Canadian market as well as the American. The Canadian author, especially if he has selected a Canadian subject, ought to have more purchasers per thousand of population in Canada than in the United States.

Mr. IRVINE: Yes, that is so.

By Mr. Chevrier:

Q. It is the same principle as you mentioned about the corkscrew a moment ago.—A. Yes. An American publisher may refuse to publish a book if he is not sure of, say 5,000, and he may not be sure of his 5,000 unless he has the Canadian market as well, and if you take the Canadian market away from him, if he sees that possibility, he may refuse to publish altogether.

By Mr. Irvine:

Q. I quite understand that that is the force of the argument in favour of the author, but it is not taking away the right of the author for the Canadian Parliament to say that we reserve the right to publish this book in Canada. We are not taking away his market, we are providing it for him. We are not preventing the author from expressing his opinion; if that were the point at issue I would be in favour of the freedom of issue.—A. Between taking away from authors what is theirs and on the other hand giving to the publishers what is not theirs, and leaving things as they are—

Mr. CHEVRIER: That is the whole point.

The WITNESS: I do not see why the author would be in a worse position than any other inventor.

By Mr. Irvine:

Q. Is there not a licensing clause in the Patent Act?—A. I really forget.

Q. I think there is.—A. If there is it takes away from the value of the patent abroad.

Q. It is recognized that the country in which the man lives has some interest in the patent, some interest in the citizen and some right —

Mr. HOCKEN: It is giving him protection.

By Mr. Lewis:

Q. What would be the value of giving anyone a patent or copyright in Canada and giving them protection if the whole country was not going to get some benefit from it? Let them take the chance themselves, if they want to take it out of our hands.—A. For all the copyright is worth, I do not think there is any right to expect any benefit in exchange for the copyright.

Q. Under the circumstances, if these licensing clauses were taken away, the Canadian author would have even an advantage over the American author,

because he would have not only the American market but the Canadian market too, and therefore he should get even a better price by going to the American publisher.

Mr. CHEVRIER: No, he cannot do that, because the protection is reciprocal by arrangement.

The WITNESS: He would have a more limited American market, anyway. The benefit he got from the additional Canadian market would not compensate for the disadvantage he would be under in the United States.

By Mr. Lewis:

Q. Do you mean to say Ralph Connor would have a more limited market than a United States author?—A. I think so, yes. He has no friends in the press; he cannot blow his own horn as easily as a man on the spot; he cannot appeal to patriotism; he is not on a par with native authors.

By Mr. Irvine:

Q. Would not these licensing clauses have the tendency to encourage Canadian authors to publish books in Canada? If that is a reasonable assumption, I think—.

Mr. CHEVRIER: Most unreasonable.

Mr. IRVINE: It is unreasonable to my friend Mr. Chevrier but reasonable to me.

The CHAIRMAN: I must request you, gentlemen, to avoid discussion between members of the Committee until we are through with the witness.

By Mr. Irvine:

Q. Is it not reasonable to suppose that the licensing clauses would encourage Canadian authors to seek publication of their works in Canada?—A. Once a book is written, yes; possibly it may discourage him from publishing that book at all or writing it.

Q. Let us say it discourages 90 per cent of them from publishing their book at all, but the other 10 per cent decide to publish in Canada.—A. If it discourages 10 per cent from writing, I say the clause is bad.

Q. The Canadian publisher, in that case, would proceed to sell these books on the American market, wouldn't he?—A. If he could.

Q. In that case the author would sell quite as many books as he is now selling, and in addition to that.—A. I am not sure of that at all.

Q. There is no reason to suppose he would not?—A. As I say, I am not an author, but I have seen a good deal of authors, and the fact of being published in the United States is in itself an advertisement in Canada; take it as you like. We cannot change the existing things, and that is the fact.

Q. That is not the point I would like to get at, but I am not disposed to dispute that. I suppose if the League of Nations published a book of yours it would have some advertising value?—A. Exactly.

Q. But that is not the point. The point is that if we can publish books in Canada we have the same access to the American market that any author has at the present time.—A. No. I am speaking now with due deference in a question of American law, but I understand—and I think Mrs. Macbeth repeated it—that you have to publish the American edition within two months of the Canadian edition to have protection in the American market at all. I may be wrong on that point.

Q. That is an American law?—A. That is an American law.

Q. That would be against the authors in America?—A. I understand the United States has not joined the Berne Convention.

By Mr. Chevrier:

Q. Is not the whole argument, Judge, in fact directed in this way, that this solicitude to keep the licensing clause in order to force the Canadian author to write and print more—does it not sound or seem to you as it does to me, something like forcing a hen to lay more, instead of leaving her to go on in her own natural way about it?

Mr. IRVINE: That is a bad illustration, Mr. Chairman, and I would like to ask the witness if he does not know that egg laying has become pretty much of a profession, and they can now make the hens lay pretty much as they want them to.

By Mr. Hocken:

Q. May I ask, Judge Surveyer, if you think an inventor and an author should be on exactly the same level as to protection?—A. I think an author should be protected more than an inventor, because he deals with intellectual work, intangible, and in the next place he is usually less of a business man than an inventor and does not appeal to the business public. He requires more protection from the Government than an inventor.

By Mr. Chevrier:

Q. Is it not also the case that in literary work there is very much more production, very much more labour and very much more energy spent than in making a very slight modification of an existing patent, sometimes putting a screw on the left side of an article, or on the top, or something that may be done with no trouble at all, while writing a book may mean the consummation of a year's work?

Mr. HOCKEN: The invention of the sewing machine, for instance.

Mr. CHEVRIER: The first ones were all right, but I am speaking of the present.

WITNESS: A new and useful improvement of an invention may be devised in a second. It may require long preparation, but it may be devised in a second. You cannot physically write a book in a second. You might possibly write a song in a short time which would make a hit.

Mr. LEWIS: Before a Canadian can get copyright in the United States, the Americans demand that it must be printed?

The CHAIRMAN: That is a matter of American law.

Mr. LEWIS: If our authors want copyright there and the Americans demand that, we have just as much right to demand that they get a copyright in their own country.

Mr. CHEVRIER: We will get the American law on the point from Mr. Burkan, who is about to give evidence.

WITNESS: I would like to say a word as to a question of law which has been raised. It has been said by some of the witnesses that these licensing clauses discriminate in favour of British born authors residing in Canada, as against Canadian born authors; for instance, Mr. Gibbon, Mr. Leacock, Miss Sime, the late Marjorie Pickthall and others, who are British born and not Canadians by birth. I saw in the papers—I have not read it in the evidence—that Mr. E. Blake Robertson pooh-poohed that comment as being the statement of a humorist. I must say that until I saw Mr. O'Halloran giving it as his opinion, as Mr. Doherty's opinion—Mr. Doherty is a jurist for whom I have a great respect—that there was no such discrimination, I would not have considered it a matter for discussion. Now that I have Mr. O'Halloran's and Mr. Doherty's opinion I am willing to give the matter a little additional study; but I may call the attention of the Committee to an article which was written, not in view

of this at all, but for another purpose by Mr. Antonio Perrault, Professor of Law at the University of Montreal, an eminent member of the Montreal Bar and an eminent member also of the Royal Society of Canada. He discusses it in the "La Revue du Droit," (Art. 3 p. 121) and takes the view that there is discrimination between British born authors and Canadian born authors. That is the opinion of a jurist. I may say, however, that if there is such a thing as a Canadian subject being different from a British subject, where would you stop and draw the line? Suppose that the licensing clauses rope in, against their opinion, authors like Gibbon, Leacock and Miss Sime and others, and when the time comes to make a law suit to enforce their claims, what would be the opinion of the same authorities with regard to an author like Sir Gilbert Parker? If you rope in Leacock and Gibbon, you must leave out Sir Gilbert Parker, because Sir Gilbert Parker has by this time become a British subject, for though a Canadian subject, he votes in England and has been a member of Parliament in England.

By Mr. McKay:

Q. Does not Mr. Leacock vote here?—A. I suppose he does if he wants to, but Sir Gilbert Parker votes in England, he has been a member of Parliament in England. Would you therefore consider him no longer a Canadian subject?

Q. Certainly.—A. When does he cease to be a Canadian subject, and when does he begin to be a Canadian subject? Would you make a Canadian subject by your will? Any man can cease to be a Canadian subject by his will.

Mr. McKAY: If I had my way, when an Englishman comes to this country he would be a Canadian.

WITNESS: When he goes to England to live, does he cease to be a Canadian subject?

By Mr. Hocken:

Q. Is there such a thing as a Canadian subject?—A. I did not know that there was such a thing until I heard that opinion. There may have been such a thing before the Naturalization Act of 1914.

The CHAIRMAN: It may be necessary to define that.

By Mr. Irvine:

Q. Do you not think that we could frame an Act so that Mr. Leacock and those other gentlemen could not get from under? Do you not think it could be fixed in that way?—A. Certainly.

By Mr. Lewis:

Q. Mr. Leacock said that he did not come under these licensing clauses, and yet he votes and has been a member of McGill University for a number of years?—A. What would you do with Sir Gilbert Parker? He votes in England, has been a member of the British Parliament, and has been Chancellor of a Scottish University. Is he a Canadian subject or a British subject?

The CHAIRMAN: If Mr. Leacock held that in his case voting here did not make him a Canadian citizen, then voting in Great Britain would not make Sir Gilbert Parker a British subject.

WITNESS: The case of Mr. G. D. Roberts is even more complex. It is very hard to find whether he has ceased to be a Canadian subject in the eyes of the law, or not; and a law which leaves judges to decide its meaning is not a good law.

By Mr. O'Halloran:

Q. I understood from what Judge Surveyer said that I had stated that Judge Doherty had defined the term "Canadian Citizen"?—A. Not exactly defined in this Act, but in other Acts.

Q. I may have used language that created that impression, but what I intended to say was that Judge Doherty had approved of the use of the term "Canadian citizen" in some other Act. He did not in this Act?—A. Yes, he was, of course, no longer Minister of Justice, and had ceased to be in Parliament.

Q. I understood Judge Doherty to say that we would not have any difficulty in the amending of the term "Canadian citizen," but he used it in Acts amending the Patent Act?—A. I noticed that in your last answer you seemed to be sure of your ground; that is why I said it becomes very difficult.

Mr. O'HALLORAN: I do not wish to commit Judge Doherty.

By Mr. Ladner:

Q. There is one point on which I do not know whether you intended to give evidence, and that is in regard to the broadcasting clauses, the question of radio broadcasting works of authors without the payment of royalties. That may include authors in the sense of the organization in which you are interested, as well as composers of music?—A. As a matter of principle, I do not see why a radio operator should be more entitled to take somebody else's property than the next man, but as to the details of that, it is a new subject to me, of course, the principle is the same for radio as for everything else.

By the Chairman:

Q. Your idea is that the author's property should be considered his whether it is on the radio or in a book?—A. I decidedly do.

By Mr. Chevrier:

Q. Unless, of course, he consents to let it go; then it is his own affair?—A. Of course, he may give it away to the radio for the sake of advertisement.

Mr. LEWIS: I move, Mr. Chairman, that we proceed to hear the American witnesses.

Witness retired.

NATHAN BURKAN called and having affirmed.

By the Chairman:

Q. Whom do you represent?—A. I represent the American Society of Composers, Authors and Publishers.

By Mr. Chevrier:

Q. What is your occupation in New York?—A. I am a lawyer.

Q. How long have you been practising?—A. Twenty-five years.

Q. Any specialty?—A. Copyright.

By Mr. Irvine:

Q. When you say that you represent the authors, composers, and so on, you mean you are their counsel?—A. I am their counsel.

By Mr. Chevrier:

Q. You are the general counsel for this Association?—A. Yes, sir.

Q. And as such you have had twenty-five years' experience with the copyright law in the United States?—A. Yes, sir.

Q. Have you appeared in any cases?—A. Yes, sir.

Q. Did you read the evidence that was given here the other day by Mr. Combs, on page 85 of the printed proceedings?—A. No, I have not had it before me. I glanced over the testimony that was given.

Q. Mr. Combs says at one place in reply to a question put in this way:—

“Q. Supposing it is his publisher, do you object to making a bargain with the publisher in regard to the payment of royalties?”

Mr. Combs' reply is

A. When we have to do what other people do not have to do, we certainly object.

Q. Who does not, by the way?—A. Our competitors.

Q. Who are they?—A. The American broadcasters.”

Now let us turn to page 91, to the long paragraph near the top of the page. Mr. Combs says:

“We do not contend in this case, nor have we entered any complaint against any of these things except discrimination against the Canadian broadcaster, which is being brought up through the difference of conditions between our competitors in the United States and Canadian broadcasters.”

Just keep that in mind. That shows, apparently, that there is discrimination. Then Mr. Ladner asks at the bottom of the page:—

“Q. Supposing the United States did not have to pay royalties, and they did have to do it in Canada, what effect would that have upon the radio broadcasting stations here?”

What I am trying to get at is whether there is the same law in the United States as there is here. In other words, is there discrimination, and is there under the copyright law of the United States free use of music? By that I mean, free use without the payment of royalties?—A. I would like you to divide that question into two parts. The first is: Is there any discrimination between the works of an American citizen and the works of a Canadian citizen? My answer to that is this: A Canadian citizen is entitled to the same protection with respect to his work as an American citizen. That is vouchsafed and guaranteed to Canadian citizens by virtue of a Presidential proclamation which was issued upon the enactment of the Canadian Act of 1921, by proclamation issued by the Hon. Calvin Coolidge, President of the United States, on the 27th December, 1923. I have the proclamation here, and would be happy to mark it in evidence for your records. Under that proclamation, every Canadian is entitled to the identical protection accorded to American citizens; and the fact is that Canadians have been protected in our courts against infringement of their copyrights upon the basis of equality with American citizens.

By Mr. Lewis:

Q. Would you read the last paragraph? Would you find discrimination in the last paragraph?—A. Of the proclamation?

Q. Yes.—A. Yes, sir, I will read it. In this proclamation, the last paragraph reads:

“And provided further that the provisions of section 1 (e) of the act of March 4, 1909, in so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically musical works shall apply only to compositions published on or after January 1, 1924, and registered for copyright in the United States.”

[Mr. Nathan Burkan.]

By Mr. Hocken:

Q. In order to get that copyright in the United States, the work has to be printed and published there?—A. Yes, and no, let me explain. In the case of music, no printing is necessary in the United States, the printing or what is called the manufacturing clause, applies only to books and periodicals.

Q. Not to music?—A. It does not apply to music; it does not apply to the drama; it does not apply to prints or engravings. It is limited strictly to books and periodicals.

By Mr. O'Halloran:

Q. Books in the English language?—A. Only in the English language.

By Mr. Chevrier:

Q. So a Canadian author is protected in the United States to the same extent as the American author is protected here?—A. Yes. In answer to the hon. member's question I would like to cite the case of Lt. Gitz Rice. I secured protection for him prior to the 27th December, 1924. As a matter of fact, in 1921 I brought a suit in the United States district court for the protection of the lieutenant. Gitz Rice is a Canadian citizen who enlisted in the first contingent of the Canadian army and was gassed at the front. He came back and in the uniform of a Canadian soldier assisted the British Military Commission in New York City to gain recruits to enlist in the British armies. While doing that work he wrote the song "Dear Old Pal O'Mine." The song was a successful hit. It stirred the emotions of the soldiers. It was one of the greatest songs that was ever published in the United States and I believe in all Canada. The Columbia Gramophone Company reproduced that song upon their records and refused to pay Lt. Gitz Rice any royalties upon the ground that Lt. Gitz Rice was a Canadian citizen, and that we, the United States, had no copyright relations with Canada. The court over-ruled that contention and held that the lieutenant was entitled to his royalties upon the ground that when he published that work he was domiciled in the United States. At that time, he was in the city of New York, true enough, in the uniform of a Canadian soldier, but nevertheless he was there; and having written the song, and published it there for the first time, he was entitled to protection. The Gramophone Company was not satisfied with that decision and appealed to the Circuit Court of Appeals which sustained the contention. In order to defeat Lt. Gitz Rice, they said: "We are not obligated to pay the lieutenant any royalties upon the records manufactured in Canada." I then proved that in the production of those Canadian records they used master records, masters produced in the United States; that eight steps were necessary to complete the manufacture of a record, and that seven steps took place in the United States; the last step taking place in Canada. Our courts held that manufacture took place in the United States and the company was bound to pay him upon every record manufactured in Canada. It appealed from that decision but my contention was sustained. So that Canadian authors, prior to December 27th, 1924, who were domiciled in the United States—that is, if they came there with their work at the time of first publication and said that the United States was going to be their home—were protected.

By Mr. Hocken:

Q. That rested upon their being domiciled in the United States?—A. Yes, they had to be domiciled in the United States.

[Mr. Nathan Burkan.]

Q. If they were not so domiciled, they could not get that?—A. They could not, because prior to 1911 under the British Act, Canadians were protected in the United States, but with the passage of the British Act of 1911, the self-governing dominions were entitled to enact their own laws. Canada did not enact its own law, and Canada did not extend to the citizens of the United States protection here. Thereupon the United States took the position that until Canada gave that protection to citizens of the United States and afforded reciprocal protection, the United States would not afford protection to Canadians. The moment the Act of 1921 was enacted into law, the moment your Minister of Trade and Commerce issued his proclamation of December 27th, 1923, our country, in turn, issued its proclamation, and ever since that day a Canadian is treated substantially and identically with American citizens without any discrimination of any kind, nature or character. That is positive; that is absolute; that is final; and I defy anybody to produce any authority, to produce any evidence that there is the slightest discrimination against the Canadians.

By Mr. Ladner:

Q. That is, whether an author is a Canadian or an American subject?—A. That is right.

Q. Irrespective of domicile?—A. It makes not the slightest difference.

By Mr. Chevrier:

Q. Let me see, if I can get this straight. At page 184—A. I did not finish. Your question was divided into two parts, first as to whether there was any discrimination. I have answered that. What was your next question?

Q. The next question was, at page 184—. A. I prefer to answer both of those questions. The next question was whether or not American broadcasters are paying, or whether they have the right to broadcast compositions of Americans and Canadians.

Q. That is why I was bringing to your attention page 184 of the evidence.—A. I should answer that in this way—

Q. Because Mr. Ladner says:

“Certainly, the United States stations can broadcast without paying anything?”
and at page 185 he says:

“Do you mean to say that the copyright law in the United States enables an author to collect royalties?”
And then he goes on to say:

“Are royalties paid by the broadcasting stations—”
and all through this paragraph Mr. Ladner is labouring with this idea—

Mr. LADNER: Obtained from the witnesses.

Mr. CHEVRIER: That may be.

“Supposing the United States broadcasting stations could broadcast without paying any royalties”
and all the way through. Will you tell us what the law is in the United States with respect to broadcasting?

The WITNESS: It is my opinion that the law of the United States protects the Canadian authors as well as the American authors against the broadcasting of their compositions by means of the radio.

The first suit that was commenced for the purpose of establishing the rights of the musical authors against the broadcasting of their works and his work, was in the federal court. At the outset, let me explain to you, Gentlemen, that our federal courts are national courts as distinguished from State

courts, and have exclusive jurisdiction over copyright cases. A copyright case cannot be brought in a state court; it must be brought in a federal court, and must be brought in a court of the district in which the defendant resides or in which he is found. The first suit was that of W. Witmark & Sons, a New York corporation, against L. Bamberger & Company, a New Jersey corporation, operating a large department store in the city of Newark in the state of New Jersey.

Q. Were you counsel in that case?—A. Yes, one of the counsel. The suit is entitled “In the United States district court, district of New Jersey; M. Witmark & Sons, plaintiff, against L. Bamberger & Company, defendant.” Judge Lynch, a district judge, heard the case. The case was not a friendly suit as was stated by some of the witnesses; it was a suit brought in good faith and vigorously contested and defended by the defendant. The district Judge after giving full consideration to the facts, and after considering the exhaustive briefs upon the subject submitted by both sides, came to the conclusion that the broadcasting of a copyrighted musical composition, if done without the consent of the copyright proprietor, was an infringement of the copyright. That was the first decision upon this subject.

By Mr. Ladner:

Q. What was the date of that?—A. This decision was rendered on August 11th, 1923. Being the very first case upon this question, the court, for the purpose of preventing any injury to the department store, said he would suspend the decree pending the appeal. That is a very common thing in our courts; when an injunction is granted, the court granting the injunction has the power to suspend the decree pending an appeal, and if the district court or the court of first instance refuses such suspension, the court of appeals has the right, upon security or bond or other condition, to suspend the operation of the injunction. In this case, *pro forma* simply, the decree was suspended. Counsel appearing for the defendant were very able counsel. The head of that firm was Mr. Pitney, who was associated with the former Justice Pitney of the United States Supreme Court. They came to the conclusion that the district judge was correct, and they carried the matter no further, but took a license from our society, and I think they paid for this license some \$750 per year. Here is a tremendous department store, doing a business of several million dollars a year. It was a very nominal sum to pay for the great advantages which this department store derived. 80 per cent of its entertainment program consisted of music, and while it brought millions of dollars of business to the enterprise, it paid some \$750 a year, and for that they secured the privilege of not only broadcasting compositions of American authors, but of Canadian authors, of English authors, of French authors, of Austrian authors, of German authors, and of Italian and Swedish authors. This American society has treaties with England, Austria, France, Italy, Germany and Sweden and for this \$750 per year, they got the right to broadcast the music of the world—

Q. But did they establish their right to royalty? That is the point here.—A. Yes. The decision would mean, hon. member, about 5 cents to each number.

Now, that case was followed by a decision in the case brought by Jerome H. Remick Company against the American Automobile Accessories Company, in the United States district court for the southern district of Ohio, the western division thereof. The American Automobile Accessories Company is a misleading name—

By Mr. Chevrier:

Q. And were you counsel in that case, too?—A. Yes, with others. Their business was the manufacture of radio sets and radio parts and radio accessories. That was their principal business, and they were using the station for the purpose of promoting the sales of radio products, accessories and parts. That suit came before a new judge. He had been on the Bench but a short time and he took the position that the broadcasting of a number in a broadcasting station was a private affair. Our law provides that a composer of a song shall have the exclusive right to give public performances for profit, and the judge took the position that, in a studio, you have no audience, the performance is given in the privacy of the studio, there is no one there, and, therefore, it is a private performance and does not come within the meaning of the law. Furthermore, he held that these performances were not given for profit.

By Mr. Ladner:

Q. Does your law distinguish between performances given for profit and those not so given?—A. Yes; under our law a performance given for charitable, religious or educational purposes is exempt from copyright control.

By Mr. Chevrier:

Q. Have you any forms of that Act?—A. Yes, Mr. Rosenthal will produce them.

By Mr. Ladner:

Q. That really did not affect the point as disclosed in the first case?—A. It did not. However, the moment that decision came down, we promptly appealed. That case was argued last month and we expect a decision on the 6th of next month. I prepared a brief in that case and I am very confident that that decision will not stand. With all due deference to the learned judge, it was a poorly considered case, and I do not think it will stand. I do not believe it is the law.

That case was followed by a case of Jerome H. Remick Company against the General Electric Company; a suit that I brought in the United States district court for the southern district of New York. Now, this case followed the Ohio case. It was argued before Judge Knox, one of the ablest copyright judges in the district of New York. I might add that 90 per cent of the copyright cases of America are tried in the southern district of New York, because the larger companies are located there, and most of the copyright business is done there; most of the publishers are located in New York and the authors transact most of their business in New York. Most of these copyright cases are fought out in the district of New York, and, therefore, the New York judges are better qualified; they have a greater familiarity with copyright matters. Judge Knox refused to follow this Ohio decision; he entirely ignored it in his opinion, and while the defendant relied upon it and argued upon it, he refused to consider it.

Q. That is the one about the private performance?—A. Yes.

Q. Were the facts similar to the Ohio case?—A. They were not, because the broadcasting was done in an hotel, but we asked this judge to decide the case along certain lines and it was in the nature of a test suit—

Q. What was the decision?—A. He held that the broadcasting was an infringement of the owner's copyright. The General Electric took no appeal. Those are the three decisions.

By the Chairman:

Q. Within what time would the appeal have to be entered?—A. Within 90 days.

[Mr. Nathan Burkan.]

By Mr. Chevrier:

Q. That was decided when?—A. That goes back to September 30th, 1924.

By Mr. Ladner:

Q. As a result of this decision?—A. As a result of this decision, I understand that about 85 broadcasting stations are to-day operating under licenses from the society.

Q. And how many are not operating under license?—A. There are a total of 537 broadcasting stations in the United States; 400 are non-commercial stations, that is, stations that are operated for private purposes by universities, colleges, academies, schools, educational institutions and religious institutions.

Q. How about newspapers?—A. Newspaper stations are regarded as commercial stations; they are broadcasting for profit; the broadcasting is done for commercial purposes.

Q. And how is it regarded—A. As a commercial station, because that is done for the purpose of advertising some enterprise, some institution, or some product, and when the broadcasting is done for the purpose of advertising or the creating of good will, or extending the sphere of influence, they are regarded as commercial stations, and under our law, when they apply to the Department of Commerce (Bureau of Navigation) for a license, they must state in their application whether the station is commercial or non-commercial. 400 are non-commercial; 137 are commercial, and of the 137 commercial stations, 85 are to-day operating under license from the Society.

By Mr. McKay:

Q. Have you any Federal broadcasting stations?—A. I do not know of any Federal station. There are some municipal stations.

Q. Have you any State broadcasting stations?—A. No. Municipal broadcasting stations. I do not know of any State stations.

Q. We have in Canada, in the province of Manitoba a government broadcasting station, and the C.N.R. has a broadcasting station; that is a railway and is owned by the government, and is what might be called a federal station.—A. We have no such station. We have no federal station or state station, but we have municipal stations. In the case of municipal stations the society issues licenses without any compensation whatsoever.

By Mr. Ladner:

Q. In short, your opinion of the law is that broadcasting stations operating as commercial institutions must pay royalty, and 85 out of 137 have submitted to that decision?—A. Yes.

Q. What about the remainder?—A. Of the remainder, the most influential and the most powerful stations are respecting the rights of copyright proprietors; they desist from using copyrighted musical compositions; they use the classical works, those in the public domain, and those concerning which the proprietors thereof simply make no claim for fees.

By Mr. McKay:

Q. What are the fees and how are they regulated?—A. Mr. Rosenthal can give you that information better than I.

Mr. CHEVRIER: Mr. Burkan is the chief counsel, and is expounding the law. Mr. Rosenthal is the general manager, and I think if we ask Mr. Burkan as to the law and Mr. Rosenthal as to the administration of it, and the amount of royalties paid, and how they are paid, we will get along better. Let us confine our questions to Mr. Burkan as to the law.

[Mr. Nathan Burkan.]

By Mr. Lewis:

Q. Do we understand you to say that you won your case against the General Electric? It is understood here that you lost it.—A. We won the case. I know that the General Electric has not used a single copyrighted number from and after the 30th of September, 1924.

Q. And a verdict was given in your favour by the Judge?—A. The verdict was given in my favour by the Judge. The fight was concerning the question as to whether or not radio broadcasting was a public performance, and the decision held that it was a public performance.

Q. Therefore, it was an infringement?—A. Yes. The question arose as to whether or not the complaint had alleged sufficiently as to the ownership of the copyright, but there was no controversy as to that between the counsel for the General Electric and myself. We brought the suit for the purpose of testing the applicability of the present law to this question. What we were concerned with was not this particular suit; this was a test suit. We wanted to find out definitely whether or not, in the district of New York, the courts would hold that broadcasting would be an infringement. The Judge said it would be. That is all we were concerned with.

By Mr. Hocken:

Q. You say an appeal is pending?—A. No, because the General Electric Company has not, since that time, used any of our works.

By Mr. Lewis:

Q. Will you tell me how station WOS operates? Is that done by the National people?

Mr. CHEVRIER: Why not ask Mr. Rosenthal that?

The CHAIRMAN: Have you any further questions concerning the law?

By Mr. Chevrier:

Q. In order to make that into a synopsis, the law of the United States protects copyrighted music?—A. Yes, sir.

Q. There is no free broadcasting?—A. No, sir.

Q. The second point is that the rights of Canadian authors are protected, in the United States, under the United States Copyright Act, to the same extent that the American authors are protected in Canada?—A. Yes, sir.

Q. They have substantially the same rights under the reciprocal arrangement arrived at under various proclamations?—A. Yes, sir. In this decision by Judge Knox, he says: "If a broadcaster procures an unauthorized performance of a copyrighted musical composition to be given, and for his own profit makes the same available to the public served by radio receiving sets attuned to his station, he is, in my judgment, to be regarded as an infringer. It may also be that he becomes a contributory infringer in the event he broadcasts the unauthorized performance by another of a copyrighted musical composition." That is the scope and the effect of the decision. The point that we were striving at was not to collect damages in the case, but simply to establish the principle, that is all, and nothing else.

By the Chairman:

Q. That broadcasting was a public performance?—A. Yes, sir. I should like to submit for the record these three decisions.

By Mr. Ladner:

Q. You say there is no form or method by which State decisions have been given on these matters, that would be effective?—A. There are none, because the State courts have no jurisdiction over these cases.

[Mr. Nathan Burkan.]

Q. I understood somebody to say the other day, when I asked whether they were State or Federal decisions, they said they were State decisions.

Mr. CHEVRIER: That is my fault. At page 187, Mr. Ladner asked:

"What would convince me still more would be the section of the Act, and whether the decisions are by the Supreme Court of the United States, or the State courts,"

and I said:

"they are all State courts, but one decision is going to appeal".

That was my mistake, I was wrong there.

By the Chairman:

Q. As I understand Mr. Burkan, a copyright suit could not be brought in a State court; it must be brought in a Federal court.—A. Yes.

By Mr. Ladner:

Q. The first case you cited there, was that or were any of them carried to the Supreme Court of the United States?—A. None.

By Mr. Chevrier:

Q. When anybody states, and when radio broadcasters in Canada write that there is free music in the United States, and they make all the other statements that have been made, whether it was intentional or not, it was something that would mislead Parliament, if they relied upon these statements?—A. I do not care to criticize the testimony of other gentlemen but it is an erroneous statement.

By Mr. McKay:

Q. You have stated that Canadian copyrights and music have the same protection as American copyrights?—A. Yes.

Q. That is, all Canadian music must be copyrighted in the United States to get protection there?—A. Yes.

Q. Now, I understand that about 75 per cent or 85 per cent of the songs broadcasted here enjoy American protection, having American copyrights but none in Canada. Is that so?

Mr. CHEVRIER: I did not make that statement; somebody else made that statement, that we were only protecting five per cent of our own copyrights.

Mr. LADNER: I asked that question, I think.

The CHAIRMAN: That is a question which perhaps Mr. Rosenthal could answer when he gives evidence. I do not think that concerns the present witness.

Mr. HEALY: This witness has established the law of the United States. He is the only expert witness on the law over there that we have had.

The CHAIRMAN: Are there any further questions to ask Mr. Burkan, gentlemen?

The WITNESS: I would like to add just one or two things in connection with this matter. A statement was made that in broadcasting, five per cent is Canadian music and 95 per cent American music.

Mr. LEWIS: Not necessarily American.

The WITNESS: That is pure guesswork. In the making up of the programme for broadcasting, the nationality of the author is not taken into consideration; it is rather the popularity of the subject of the composition. If, at the moment, all the songs happen to be those of Canadian origin, if such songs are in public

[Mr. Nathan Burkan.]

demand, in public favour, they would broadcast those. If they happen to be French songs, they would broadcast those. Music does not speak a national language, it is universal, and when they come to make up programmes they pay not the slightest attention to the nationality of the composer. They will take Russian, French, Italian, American and Greek music, so long as the programme represents a selection of songs which would please and attract the audience. Another thing you ought to know in connection with this matter is this, that it has been developed through evidence taken by a committee of Congress, the Committee of the Merchant Marine and Fisheries in the House of Representatives, 68th Congress, first session, on Bill HR 7357—that was a bill to regulate radio communication. The evidence developed that the entire radio industry in America was under the control of the Radio Corporation of America; the Westinghouse Electric and Manufacturing Company; the General Electric Company; the Western Electric Company and the American Telephone and Telegraph Company; that these five companies, through their ownership of radio patents, are in absolute control of the radio industry in America. It was shown that these concerns have collectively purchased the patents relating to this industry and that they have the exclusive right to purchase, manufacture and sell radio apparatus. It was shown that they have pooled their interests and that they have also parcelled out to each one a certain department of exploitation, connected with radio exploitation. It has been shown that the Radio Corporation of America, in this pool of five, the offspring of the General Electric Company, has the sole right to sell the tube which every receiving set must have. These tubes cost from sixty cents to eighty-one cents to manufacture. These tubes were sold, at first, at \$6 per tube; then they reduced the price to \$5 per tube, and now, they are being sold for \$3 a tube. It was shown that in the year 1924 some six million of these tubes were sold. It was also shown that the Radio Corporation of America's earnings for 1924 were \$54,848,131; for the year 1923, the business was \$26,394,790; and in 1922 the business was \$14,830,857.

By Mr. Healy:

Q. Business or profit?—A. The business.

By the Chairman:

Q. It doubled every year?—A. Yes. The profits for the year 1924 were \$9,503,442, for the year 1923, the profits were \$4,737,774. The reason I call this to your attention is because of the propaganda concerning the request that the Radio Corporation of America pay \$5,000 a year for the privilege of using the works of all the composers of the world. A corporation that does a business of \$54,848,131, operating the largest and most powerful stations in America, has been asked to pay \$5,000 a year, and that means about a nickel to each composer of the world whose works these people are using. I wanted you to know that this is the character of propaganda with which you have been deluged.

By Mr. Lewis:

Q. Mr. Burkan, you were speaking a few moments ago in regard to protection of copyrights, and you are arguing on their behalf, and now you are speaking about the tube. The work of producing a tube by De Forest and these other people is just as much a brain child and requires more experience and more technical knowledge than the production of a piece of jazz music or a song, and yet you say it costs sixty-seven cents to produce a tube and that it should be reduced.—A. No, I did not argue that.

[Mr. Nathan Burkan.]

Q. You are arguing that they earned fifty-four million dollars, and that they could pay the \$5,000.—A. I argue that it is unfair, where 80 per cent of the programme which they broadcast consists of music. They have admitted—and I shall read to you the testimony of the vice-president and general manager of the Radio Corporation of America. He said that when they sell these tubes and these devices they add to the selling price a certain percentage to cover the cost of operating the broadcasting stations. In other words, the owner of the receiving set is paying for this entertainment. That is what I am trying to show, and when they are asked to pay \$5,000 a year, I want to show that that is a very modest request considering the amount of business they are doing.

By Mr. Ladner:

Q. What is this \$5,000 you are referring to?—A. The royalties they should pay to the composers of the world for the privilege extended to the stations of this Radio Corporation of America.

Q. How do you arrive at the sum of \$5,000?—A. It was an arbitrary sum, based upon the fact that this company was doing a business running into many millions of dollars.

Q. This was a sum asked for by your Society?—A. Yes, and that money was to be distributed among our members, and the members of the various foreign societies with whom we have relations. The Radio Corporation wanted a five-year contract. When we discovered that they proposed to build a number of super-power stations to cover the entire United States—I will read you the testimony—which would drive out of business all the other stations, giving them absolute control of radio broadcasting we refused to sign up for five years. I should like the privilege of reading to your committee what this Radio Corporation of America has in mind, with respect to getting control of radio broadcasting in America.

By Mr. Lewis:

Q. Do you mean to say a super-power station cuts out the smaller stations?—A. Yes, naturally.

Q. Not if you have a good machine?—A. Yes, because of its range and scope.

The CHAIRMAN: Is it the pleasure of the Committee to hear the rest of the witness' testimony?

Mr. HEALY: I think we could take that statement as a fact.

By Mr. Chevrier:

Q. If these most powerful stations have the power, these stations that it is suggested they want to build, is it not a fact that it is liable to put out of business a large number of the Canadian stations?—A. Naturally, because the economic pressure will be such that the smaller station will not be able to compete with the others. They propose to link up with opera houses; they propose to get the finest talent in the world, and these smaller stations will not be able to compete with these super-power and powerful stations having such a magnitude of scope and range.

By Mr. Ladner:

Q. Does this corporation control such organizations as the National Railways broadcasting stations, and the "La Presse" station?—A. They control the patents, and "La Presse" and every other broadcasting station operates under licenses issued by the Westinghouse Company or the Western Electric Company. No station can go into business and operate without a license from one of the patent holders, and the patent holders are this group of five. They have a grasp upon, and control the business. I have given you the names of these five firms.

[Mr. Nathan Burkan.]

You have heard a great deal said here that broadcasting is done gratuitously and as a matter of benefaction and generosity, by these broadcasters. Mr. Sarnoff, the authority who testified before the Committee on Merchant Marine and Fisheries, is the vice-president and general manager of the Radio Corporation of America, and he stated at page 161 as follows:

"I do not mean to imply that in giving broadcasting to the public, the Radio Corporation constitutes itself or believes itself to be a charitable institution. There is no secret about the reason why we broadcast. We broadcast primarily so that those who purchase our receiving devices may have something to feed those receiving devices with. Without a broadcast sending station, the broadcast receiver is just a refrigerator without any ice in it. Now, we apply a portion of the profits earned on the sale of these devices to pay the cost of broadcasting."

In other words, they make the man who buys the receiving set and the parts, pay for the entertainment that he is getting.

By Mr. Chevrier:

Q. And then they refuse to pay \$5,000 a year, when they make these millions?—A. They are willing to pay that \$5,000, providing they get a five-year license. Mr. Sarnoff testified on page 177 on the subject of super-stations, saying,

"I believe future development tends in the direction of super-power stations—stations with great power—sending out simultaneously a programme of the highest character, and these stations connected together themselves by radio, as distinguished from wire"

Concerning super-power stations, he further testifies at page 159.

"The super-power station that I picture would be of larger power, greater range and would provide a national programme of high quality. A few such super-stations located at suitable points in the country and inter-connected by radio itself, would enable all of these units to send out the same programme simultaneously."

Further down on the page he says:

"If we get a chain of super-power stations and cover the entire country, then we create an entirely new problem as to the question of copyright music, paying for talent, handling the artists and the like. I think, you will agree, it will be a mark of distinction for an artist to be able to say, 'Last night I sang in the national broadcast station and was heard by the United States.' Thousands of people would give all they possess to be able to go on the Metropolitan Opera House stage and be heard by a select few thousand. Many more than that would like to go on the stage which gives them the whole nation as a forum. It will bring out possibilities of latent talent residing in those who have never had the opportunity to approach the public."

"But if that is impracticable, if that should not prove to be the desire of budding artists, why then, suppose we do have to pay for it? That does not frighten me. If we have a national broadcast station whose voice reaches over the country, and if we have to pay for the talent, we will do it. If we have to spend \$2,000,000 or even more a year in giving the very best and only the best which can be had from that single point, making it possible for everyone in the United States to hear it, an industry of half a billion dollars per year, which I believe the radio industry will reach within the next few years, could support it if the burden were equally and equitably distributed."

"Suppose the industry taxed itself 2 per cent or 1 per cent, or whatever the percentage might be; that percentage would be more than

would be necessary to run a first-class national entertainment institution, paying more liberally than any theatre or any opera can pay at the present time.

"Gentlemen, that is the picture as I see it, and if we live for the next five years, as I hope we shall, we may be talking of that as belonging to the past as well."

Now, Gentlemen, when we learned that they were going to erect seven powerful super-stations and had asked for a contract, and when we realized with that contract in their hands, that the other small stations would be driven out of business, we did not propose to sell our birthright for a mess of pottage. We said: "No five-years' contract, but a contract for a single year." Of course, they said: "We will not trade with you." Now, what are the figures. In 1923 the radio took in from the people of the United States \$175,000,000; in the year 1924, \$350,000,000, and this year it will be \$500,000,000.

Q. Not in royalties?—A. No sir, gross business. As I stated before, 80 per cent of their programme is music, and all that they are paying American composers and the composers of the world is \$40,000.

By Mr. Hocken:

Q. How much of that 80 per cent is copyrighted?—A. I should say easily 60 per cent is copyrighted.

By Mr. Lewis:

Q. As the result of your refusal to make a contract for five years with those large super-stations, are they paying anything at all?—A. They are paying nothing at all.

By the Chairman:

Q. Have they erected those super-power-stations?—A. No.

By Mr. Lewis:

Q. Are they operating?—A. They are operating.

Q. Are they paying any royalties?—A. No, sir.

Q. Nothing at all?—A. No, sir. They have done this: They wanted to broadcast certain programmes, and for those programmes they wanted to use copyright music; so an arrangement was made by the Brunswick-Balke-Collender Company whereby they secured permission to broadcast from these stations controlled by the Radio Corporation of America, I think for one hour or two hours a week, and for that they are paying \$2,500 a year. Am I right in that, Mr. Rosenthal?

MR. ROSENTHAL: It is a little more than that.

WITNESS: For that, they are paying this amount of money. It has been developed before the Copyright Committee at Washington that the American Telegraph and Telephone Company which owns the Western Electric Company, or rather owns 89 per cent of the Western Electric Company, charged at the rate of \$400 per hour, or at the rate of \$10 per minute for the use of their station. In other words, if you manufacture a shoe, and you want to introduce your shoe on the market by radio, you go to the broadcasting station and you engage a quartette who call themselves the Regal Quartette; and for that privilege you pay the station \$400 per hour or at the rate of \$10 per minute. The WCAP station at Washington, which is controlled by the same company, charges \$15 per minute; and the WHN station, New York,

[Mr. Nathan Burkan.]

charges \$5 per minute. These gentlemen at those stations make you pay as much as the traffic will bear. You bring your own entertainment, your own music, your own sandwiches and your own beer; but you pay them at the rate of \$5, \$10, and \$15 per minute for the privilege.

By Mr. Chevrier:

Q. There is no more free beer than there is free music?—A. That is right. One more answer. Something was said as to how this matter stands. The broadcasters sent down to Washington a small group of gentlemen, who disclaimed all connection with the radio operations of the Big Five control, and urged upon Congress to pass a bill taking from the music composer his right to control the broadcasting of his works. Congress listened very patiently to their claims and appeals, but they fell upon deaf ears. Nothing has happened to those bills. They died in committee. I am, if I may say so, a pretty good judge of human nature; I saw those men sitting around a table, and I heard the arguments, and I do not think that any American Congress is ever going to enact a law to rob the man who creates, of his property rights, to enable a group doing \$500,000,000 worth of business a year to use that man's property, or to enable them to do this great business without paying the composer something for his contribution.

By Mr. Hocken:

Q. Are you aware that the author is protected in Canada against infringement of his copyright by the Criminal Code?—A. I have not paid any particular attention to that phase of the law.

Q. They are protected now?—A. We have a criminal provision in our laws, but against the Radio Corporation of America or against the Western Telegraph and Telephone Company, I do not think it is advisable to invoke criminal laws.

By Mr. Ladner:

Q. Do you know of a proposed bill in the Sixty-Eighth Congress relating to copyright by Mr. Perkins?—A. Yes, I do.

Q. What is the standing of that bill now?—A. That bill was under discussion before the last Congress. I appeared before the committee and argued in its favour. It is a bill to enable the United States to adhere to the Berne convention. The bill proposes to do away with the manufacturing clause and guarantees and vouchsafes to the author his broadcasting rights. It is a progressive piece of legislation. Its object is to put us on a parity with England, with Canada, and with all other nations who are in the Berne convention. There is an emphatic movement in America to join the Berne convention.

Q. How far has this bill progressed?—A. Hearings took place, and the Congress adjourned, but a special committee has been appointed to take further testimony this summer.

Q. Is that bill likely to become law?—A. It is hard to speak for an American Congress, and therefore I would not want to answer that question.

By Mr. Chevrier:

Q. You have had bills for free music that have died in committee?—A. Yes, sir.

Q. What is the prospect for that bill? Has it any more chance of going through than the others?—A. The same bill was introduced in the Senate by the Chairman of the Committee on Patents and Copyrights, and the prospects are excellent. But it would be presumptuous for me as lawyer who appeared before the committee and urged the enactment of that bill to prophesy.

[Mr. Nathan Burkan.]

By Mr. Hocken:

Q. Have you read section 25 of our present Copyright Act?

By Mr. Lewis:

Q. As the result of the failure of the company you represent to sign an agreement for five years with the seven super companies, and in view of your further statement that these companies are operating free at the present time, is it the intention of your company to go to court in regard to infringement?—
A. They are not operating free at the present time; they are not using any copyrighted works.

Q. I understood you to say they were free at the present time?—A. No. I stated they are operating without license, but they are rigidly respecting and observing our rights. They are not using copyrighted music, but if they do, I unhesitatingly will proceed against them to compel them to respect the statute.

Q. You mean to say that the seven large companies in the United States are keeping strictly to those in the public domain and classical music, and not using copyrighted music at all?—A. I mean to say that these stations, the Radio Corporation of America, the General Electric Company, and those controlled by "The Big Five" are trying their best to comply with the law and are not using copyrighted compositions in their programmes. We have been in contact with them, and they have assured us from time to time that they do not wish to infringe our rights to the slightest extent.

By Mr. Ladner:

Q. Is that what is known as the "Western Electric Trust?"—A. It is the same group.

Q. They constitute the Western Electric Trust?—A. The Western Electric is one of the group. It is the same company.

The CHAIRMAN: Did you want Mr. Burkan to give his opinion on section 25, Mr. Hocken?

Mr. HEALY: I don't think it is fair to ask Mr. Burkan to give his opinion on a Canadian law.

Mr. HOCKEN: I simply asked him if he knew it was in our law.

The WITNESS: Yes.

Mr. HOCKEN: I wanted to know if he understood it to include the radio.

The WITNESS: I should agree with that conclusion, that that prohibits radio broadcasting.

By Mr. Chevrier:

Q. But you have no objection, as a lawyer, that there should be a definition of "broadcasting" introduced into the definition clauses?—A. Not at all.

Mr. CHEVRIER: That is what I have been trying to tell Mr. Hocken for the last three weeks.

The WITNESS: There is just one more point and then I am through, and I will try to be very brief. It is this: it is not so much a matter of money with the American composers as it is a question of the control over the manner of broadcasting. We had a very popular composition known as "I Love You" and in the hey-day of its success that composition was broadcasted 16 times in one night. The result has been that the continuous pounding and pounding of the same number in a number of stations three or four times a night has destroyed the popularity of the song.

By Mr. Ladner:

Q. In other words, they became sick of love?—A. They became sick of love. We have gotten to the stage where the theatrical producers of to-day, and the managers of the shows, are insisting there must be some regulation, some control over the broadcasting of the numbers from the shows. As it stands now, the incessant, playing of the same number four or five times nightly by every radio station destroys the value of the song. You tune up perhaps eight stations a night. All these eight stations are playing the same number, and you are cutting down the life of it, and our people's interest in the United States is not so much the money, because it amounts to nothing—it is only about a nickle a year a number—but the right to retain the control and to say to a station "You must not play this number more than once a night," or if there are five stations to say, "You must not play this number more than three times a week over the five stations." That is what we are asking for.

By Mr. O'Halloran:

Q. It would do the same injury to the authors whether it is for profit or not?—A. Yes.

By Mr. Chevrier:

Q. But it is the author's own business to do with it as he likes?—A. Yes.

Q. He has the right to give it away if he wants to?—A. Yes.

Q. Just one more question. Look at page 96 of the evidence, the testimony of Mr. Guthrie.—A. I have read that evidence—

Q. He says:

"If we are forced to do so, we can use American copyrighted stuff and cut out the splendid advertising we now give to Canadian compositions."

Now, is it possible in Canada, without any difficulty or trouble, to use American copyrighted stuff?—A. I don't believe so, because under the present proclamations issued in 1910 and 1921, American citizens have been guaranteed protection in Canada. These proclamations were issued upon assurances by the British Government and the Canadian Government that American citizens are protected here.

By the Chairman:

Q. It is a matter of reciprocity?—A. Yes.

Mr. CHEVRIER: So Mr. Guthrie's statement is not correct.

The witness retired.

JULIUS C. ROSENTHAL, called and having affirmed.

By Mr. Chevrier:

Q. Mr. Rosenthal, will you turn to page 211 of the evidence, and you will notice that there I asked the question:

"Do you know whether any rates are asked in the United States for broadcasting?"

and the witness answered:

"I am informed there are 600 broadcasting stations in the United States and approximately 20, possibly temporary, are paying fees. I am likewise informed that the 580 are not. I know positively in several cases they are not paying, and they say: 'as soon as you think you have any rights, come on through the courts'."

What have you got to say to that statement? Is that a correct statement of the state of affairs there?—A. Yes, sir. Mr. Chairman and Gentlemen, I am hoping to leave this afternoon and I have but ten or twelve minutes to make my statement, and with your kind permission I would like to proceed without interruption, and then answer questions.

The CHAIRMAN: Follow that procedure, gentlemen.

The WITNESS: Mr. Chairman and Gentlemen, let me express the gratitude of the American Society of Composers, Authors and Publishers of which I am the general manager for this opportunity of appearing before your Committee. We appreciate it very much. Let me tell you what the American Society of Composers, Authors and Publishers is. It comprises 430 composers and authors and 44 musical publishers, the foremost men in the writing and publishing of music in the United States, and by reciprocal treaties represents similar societies in England, France, Italy, Austria, Germany and Sweden. You, gentlemen, have extended an extreme privilege to our Chief Counsel in accepting his opinion upon the law of the United States, and I think it would be very pertinent if I should give you some assurance of the fact that in accepting his opinion, you have no less an authority than the Chairman of the Copyright Committee of the House of Representatives of the United States regarding his standing. At the conclusion of five hearings on the bill designed to amend the American Copyright Act, by removing radio broadcasting, addressing the Committee, the Chairman, at page 351, said:

“The CHAIRMAN: Mr. Burkan, I want to ask you a question there. By virtue of your long experience you are probably more familiar with anything pertaining to copyright law than anybody else in the country, and I want to ask you—

“Mr. Burkan (interposing): That is a big contract.

“The CHAIRMAN: Well, I will say you are the best informed man that I have come across then. It is immaterial how strong we make the adjective, so far as my question is concerned. I want you to forget for a moment whom you represent and just answer the question from the standpoint of your experience.

“Mr. HAMMER: He won't do that.

“The CHAIRMAN: Yes; he will. Besides being an able lawyer, the witness is also an able politician.”

Mr. Burkan also participated in drafting the 1909 U.S. copyright law, and I might say to the Committee that Mr. Burkan has tried more copyright cases than any lawyer in the United States. The situation which is presented to you, gentlemen, is identical to that which we had to face in Washington during the past two years. Through a series of propaganda, the various organizations claiming to represent radio associations endeavored to amend the present United States copyright law, and I have brought with me four bills, one of which was introduced in the United States Senate and three in the House, all of which were designed to amend the present Copyright Act and take out the radio broadcasting restrictions. I think that is conclusive evidence of the fact that under the copyright law as it exists to-day in the United States, the radio broadcasters at least recognize that there is some legal restriction upon the use of copyrighted material.

In the United States we have licensed, up to the present date, 85 broadcasting stations. It may be interesting for you to know just the classification of these various stations. Roughly speaking, 21 are radio manufacturers, jobbers, and dealers; 20 are department stores; 13 are newspapers; seven are hotels; three are telephone companies which sell service; five are special contracts issued to the Brunswick-Balke-Collender Company, allowing them one

hour a week to broadcast from these five important stations to which reference has been made, and the balance is scattered among insurance companies, automobile manufacturers, business schools and so forth. The total amount of license fees we are collecting from these stations is approximately \$40,000 a year, varying from \$200 a year to \$2,500 a year, which largest sum applies to the American Telephone & Telegraph Company. You will undoubtedly be interested to know the basis upon which we make these charges. We have considered first the power of the station; second, its location; third, the character of the business in which the broadcaster is engaged, and fourth the general advantage, estimating it as best we can, that the broadcaster derives from the use of our copyrighted material. In the instance of the American Telephone & Telegraph Company, which is the only one paying \$2,500 a year, that station charges anyone desiring to commercially broadcast \$400 per hour for the use of their station, and the revenue which they derive from that broadcasting exceeds a quarter million dollars per year, and they very cheerfully pay us \$2,500 per year. In the case of a newspaper the license is \$500 per year; in the case of a department store it averages about \$750.

By Mr. Ladner:

Q. What do these licenses cover, the licenses you grant?—A. The licenses give them the privilege of broadcasting copyrighted musical compositions of the American Society of Authors, Composers and Publishers, including the works published in the United States, England, France, Italy, Germany, Austria, and Sweden.

Q. Those are all the principal cases?—A. Yes.

By Mr. Lewis:

Q. That is a very small sum to divide among all these authors?—A. It is a very small sum; it is not a question of the amount of money we receive at all; this will not compensate us one per cent for the loss that we are suffering in our business. I bring to you the authentic statement of the four largest music publishers of the United States—Leo Feist Inc., Irving Berlin Inc., and Jerome H. Remick & Co., publishers of popular music, and Harms Inc., as a publisher of musical compositions from musical comedies—that in the year 1924 the loss in royalties from mechanical reproduction and sheet music is 50 per cent, as compared with the year 1923. So no matter what these stations pay, they will never compensate us for the actual loss which we are suffering. What we are endeavouring to do, and what is most essential, gentlemen, is that we shall be able to control the programme of the broadcasting station to the extent of regulating the number of times that a copyrighted song can be broadcasted at each individual station, and that is by far the most important thing in which we are interested.

Q. Do you represent pretty well all the largest publishers, Enoch & Co., and Boosey & Co.?—A. They come in through the Performing Right Society of England.

Q. And Ricordi?—A. Yes. He is a very active member of our organization. From the figures which I have given you, the average estimate of a broadcasting license is \$470 per year. We did not, at the outset, take any drastic action against the broadcasting stations. We held a conference in the city of New York, to which they were all invited, and we sat around a table and stated just what our position was; we invited them to co-operate with us; we invited them to secure licenses upon a nominal basis, and the record of the conference is to the effect that they conceded our right under the copyright law to restrict broadcasting our copyrighted music. They appealed to us to give them an opportunity to adjust conditions. In the United States, I am giving this for the benefit of the Committee, no royalty is paid upon a receiving set.

[Mr. Julius C. Rosenthal.]

Under our law you cannot collect from owners of a receiving set; anybody can buy a set, put it in their home, and there is no royalty of any kind. The broadcasters, therefore, took the position that they were getting no direct return, that there was no way of compensating them for the expense entailed in the operation of a broadcasting station. The average cost of installing a broadcasting station in the United States is from \$25,000 to \$50,000, while the average cost of operating a station in the United States is from \$20,000 to \$250,000, so you see—

By Mr. Ladner:

Q. Per year?—A. Per year, so you see when evidence is produced here what this baby industry in Canada, which did a \$20,000,000 business last year, and has a \$30,000,000 business contemplated for this year, would suffer from the payment of a nominal license fee to the author or composer; it seems to me that in all fairness, that statement should be carefully analysed.

By Mr. Hocken:

Q. There is no such proposition in this country.—A. As what?

Q. As allowing this broadcasting to be done without payment.—A. I took it from the record, as I read it last night, that there is a motion now before this Committee, a motion emanating from the radio broadcasters, that the Act, pending before you be amended so that radio broadcasting in Canada may be given free use of copyrighted music without the consent of the owner of the copyright.

Mr. HOCKEN: No such thing at all.

Mr. HEALY: The Canadian National came here and asked that specifically.

Mr. CHEVRIER: Mr. Combs brought forward a resolution asking for free broadcasting. Then Mr. Guthrie comes along and says, "I don't care whether you give free broadcasting or not, but I do care that whatever you do, you give free music to the Canadian National stations."

The CHAIRMAN: Let us discuss these matters after the witness has gone; we can take up the discussion between the members of the Committee at a later date.

The WITNESS: I should like to reply to a few of the statements of some of the witnesses. Mr. Combs gave testimony before this Committee and referred to music publishers and others sending music to broadcasting stations, asking them to broadcast it. Gentlemen, that is a very simple proposition. Any publisher or any author who desires to follow free broadcasting of his works may do so, and the broadcaster has an absolute right under your law and under ours to broadcast it without restriction. Anyone who sends music in that way implies a license to the broadcaster and there can be no penalty as far as the broadcasting is concerned. Mr. Combs says that the broadcasting station gives the brain child of the composer to the public. Why should the broadcasters be the special beneficiaries of the brain child of the author or composer? That proposition was advanced in Washington and was brushed aside by our legislative body, and I hope it will meet the same fate here. Radio broadcasters are no more entitled to take the property of an author or composer than to take the tubes which they must buy, and which are an essential to broadcasting. They cost large sums of money, and—

By Mr. Lewis:

Q. Has not the patent run out in the United States, in regard to these tubes?—A. Not in the United States, I should say not. A remark was made about the Bamberger suit, that it was friendly. It was nothing of the kind. At the end of our conference with all the radio broadcasters, when they refused to agree upon a price for our license, we said, "We have but one alternative, to

[Mr. Julius C. Rosenthal.]

institute legal proceedings to have our rights established." The nearest station that infringed was in Newark, New Jersey. They played "Mother Machree" and proceedings were instituted. Judgment was rendered in our favour. They took a license from us and renewed it for the present year. A statement was made with reference to the Radio Corporation of America. They are not broadcasting the copyright music belonging to the members of our Society. They have occasionally, by accident, included in their programme a number or tune, and in every instance, when it was brought to their attention, they have extended an apology, and the last communication which we received from their general counsel before I left to come here was to the effect that they regretted very much that one of our numbers had been played, and that they were doing their very best to preserve our rights. As further evidence of that fact, the Brunswick-Balke-Collender Company wanted some of our works to broadcast in their programme, and they made an arrangement with us under which they pay us, for some stations, \$500 per year, and for others, \$1,000 per year, depending upon the locality of the station and the power of the station. So, that is recognized, and I wish most emphatically to deny the statements, direct or implied, in the record that in the United States broadcasting stations are using our music without respecting our rights. Every station in the United States of any size or proportion that has not a license is now negotiating with us and is respecting our rights. We recognize the fact that the case pending in the U.S. Circuit Court of Appeals will be decided within the next ten days and will establish the law which I believe will be generally accepted throughout the United States. In the meantime they have asked us to suspend taking action until that judgment has been handed down.

Mr. LADNER: Would you send us a copy of that decision when it is rendered?

WITNESS: I will sir. A statement was made by Mr. Cartier representing *La Presse* of Montreal and other newspapers to the effect that newspapers do not broadcast for profit. That statement is absurd. Why do they broadcast? Why do they spend \$40,000 a year to operate that station? Why would any business man do it, if he did not think it was good business? It is obvious that when money is spent by a newspaper to erect and maintain a broadcasting station, it is charged against their business. It is a business proposition, pure and simple. An hon. gentleman asked me something about municipal stations. We have only two in the United States that I know of; one in New York and the other at Atlantic City. In both instances we have extended a gratuitous license to broadcast the works of our composers, and they respect any request we make to withdraw, restrict, or limit a number that is broadcasted at their station.

By Mr. Chevrier:

Q. You have consented to let the municipal stations use copyright music without paying royalties?—A. Yes sir.

Q. The authors have consented?—A. Yes sir. Every station in the United States operated by an educational, municipal, religious or charitable institution does so under a license from us in this form. (Reads).

"In recognition of the educational and scientific service rendered by the above class of institutions operating radio broadcasting stations, the American Society of Composers, Authors and Publishers, without prejudice to its rights or the rights of its members as copyright proprietors, grants to such as receive this notice, conditioned upon each of them being a *bona fide* institution or establishment of the nature listed at the head of this communication, the following license:

"(1) To publicly perform, by radio broadcasting, any of the musical works copyrighted by a member of the American Society of Composers, Authors and Publishers, subject to the following conditions:

"(a) No charge is made for this license, which, being issued without consideration is deemed to be revocable at any time.

"(b) That this license shall not come into effect unless and until the recipient shall acknowledge the same and indicate acceptance of the conditions herein stated.

"(c) That immediately preceding the broadcasting of any programme including any of the works of members of this Society, the following spoken announcement shall be made:

"'All musical compositions copyrighted by members of the American Society of Composers, Authors and Publishers included in the following programme, are broadcasted by its special permission.'

"We are happy to extend this courtesy and recognition to the educational institutions of the country, and we especially request that acknowledgment of this communication be promptly forwarded to us."

Now, as more indicative of the loss which the music industry is suffering because of the competition by radio, let me briefly refer to a full page advertisement in the New York Times indicating that the Brunswick-Balke-Collender Company, the second largest manufacturer of mechanical records in the United States, in an endeavour to recoup their losses have been giving \$5,000 cash prizes every month to those who listen-in on the programmes broadcasted and to those who most accurately report the names of the authors and the composers of the songs. The Victor Talking Machine Company, in order to recoup their losses and increase their sales, have given seven performances by the best artists in the United States or the world, tied up with 12 stations in the United States. I have had information from officials of both these organizations that they have suffered immeasurable loss due to radio competition. As an illustration: The first impression of a Paul Whiteman record in the United States was usually about 100,000; I am informed that two of the Paul Whiteman records, two of the outstanding hits of the United States, one called "All Alone" by Irving Berlin, and another called "I Wonder What's Become of Sally" both upon the same record, only returned about 40,000 for the first impression taken.

By Mr. Ladner:

Q. The people get it over the radio instead of from the records?—A. Yes, sir. It is just this way, sir: the time of every human being for entertainment is limited, and if they are attracted by radio programmes, which they naturally will be, then they certainly will not buy the phonographic records and will not play the piano, and to that extent we are suffering because if they don't buy phonographic records, the receipts for royalties fall off, and if they don't buy sheet music, the receipts for royalties fall off, and the condition with which we are confronted in the United States, is that this baby industry, with a business of \$350,000,000 last year, and the possibility of \$500,000,000 this year, is competing with our livelihood. It is injuring us. We are endeavouring in the United States to protect ourselves, and we ask you here in our neighbouring country, with which we have so much in common, to extend us that equal protection. Last week there was rebroadcasted from London a programme picked up at Sayville, relayed by marine and land wire to the broadcasting station in New York, and from there transmitted by land wire to Chicago, Illinois, and sent throughout the United States. We protested to the Radio Corporation against any such use of our copyrighted music and their response, gentlemen, has been that they have no control over the transmission at the source—that is, London—and they think they have the right to pick it up and use it as they please. If

[Mr. Julius C. Rosenthal.]

you gentlemen change your law in this country so that anybody can broadcast copyrighted music in Canada, then surely at the source it will be wise to use our works, and their contention, if it were sustained, would be that the broadcasters of the United States could pick up our music from Canada and transmit it as they saw fit.

We thank you very much for this opportunity, and hope that we have given you some enlightenment. If there is anything further I will be very glad to answer questions.

By Mr. Chevrier:

Q. What effect do you say repeated broadcasting has on songs and the like?—A. Over-broadcasting of a song, or the inferior rendition of a song, absolutely destroys it. The most concrete example of that has happened in the last three or four weeks. In the city of New York an outstanding musical comedy production is entitled "Rose Marie." Numbers from "Rose Marie" were broadcasted to such an extent through the United States that the producer of the show appealed to us to restrict the further broadcasting of the number. This is the effect. A show playing in New York sends road companies throughout the country. Instead of their music being a novelty, when the show reaches a town the songs have been broadcasted hundreds of times, so that the public is not attracted to the theatre. Almost every broadcasting station in the United States is connected with a dance hall, and at the dance hall they play all the leading numbers. It is admitted that 80 different musical compositions are essential for the programme of a dance hall every night. Every broadcasting station in the country tuning in on a dance hall plays the outstanding hits, with the result that practically every station in the United States plays the same number once or more each night, and you, gentlemen, can readily understand that if 500 broadcasting stations play the same composition night after night, the public will have no interest in the purchase of the song.

The CHAIRMAN: Is that all, gentlemen? We wish to thank you very much, Mr. Rosenthal and Mr. Burkan; we have had most valuable evidence, most interesting and most valuable, from you gentlemen.

Mr. HEALY: If I am in order, I would like to move that the expenses of Mr. Burkan and Mr. Rosenthal be paid, for attending this committee.

Mr. HOCKEN: That will include the other witnesses, I suppose?

Mr. BURKAN: I thank you very much, but we could not accept it. We were only too happy to come here and give our testimony upon the condition that we got no expenses or anything else.

The CHAIRMAN: It is very kind of you, and on behalf of the Committee I thank you very much for coming here and giving your evidence. We appreciate your kindness very much.

Witness retired.

The CLERK: Mr. O'Halloran has presented a memorandum which he was asked to prepare for the Committee.

Mr. LADNER: I move that it be printed as an appendix to this day's proceedings.

Motion agreed to.

Mr. HOCKEN: Mr. Chairman, before the Committee disperses, I would like to make a suggestion. I personally have not had time to digest this evidence; I find I am not as familiar with Mr. Combs' evidence as I should

[Mr. Julius C. Rosenthal.]

have been, in view, perhaps of the fact that I was not here the day he testified. I would like to suggest that we take from now until after Easter to consider the evidence, and then we can take up the consideration of the bill.

The CHAIRMAN: The evidence is closed, then, and it is moved that we meet after Easter, and go on with the bill.

Moved by Mr. Hocken that the Committee rise until Thursday, April 16th, at 10.30 a.m., at which times consideration of the bill will be resumed.

Motion agreed to.

Committee adjourned.

THURSDAY, April 16, 1925.

The Special Committee appointed to consider Bill No. 2, An Act to amend and make operative certain provisions of the Copyright Act, 1921, met at 10.30 a.m., the Chairman, Mr. Raymond, presiding.

Other Members present:—Messrs. Chevrier, Healy, Hocken, Hoey, Irvine, and Ladner.

The CHAIRMAN: Gentlemen, there are some communications, including one from Mr. Hocken referring to certain parties in Toronto who desire to give evidence. There is present a gentleman from Montreal, Mr. Kennedy, who represents the Authors' Association. At the last meeting of the Committee, we came to the conclusion that we would not hear any more evidence. I leave it to the Committee to decide whether they desire to hear Mr. Kennedy. He has taken the trouble to come here from Montreal, and he states that his evidence will not take up many minutes.

Mr. LADNER: I move that we hear him.

Mr. HOCKEN: I second that.

Motion agreed to.

Mr. CHEVRIER: How much more evidence are we going to hear? We have opened the door now; when do we close it?

The CHAIRMAN: We are opening the door to those who are present.

Mr. CHEVRIER: And to no others?

The CHAIRMAN: Just as the Committee wishes.

Mr. CHEVRIER: May I ask you to find out the wish of the Committee with reference to hearing more evidence?

The CHAIRMAN: Is it the desire of the Committee that this should be the last witness?

Mr. HEALY: I think it was opened up because this gentleman has presented himself, although it was the understanding that we would not hear any more evidence.

Mr. LADNER: In my opinion, I do not think that this means that we are going to invite any more witnesses; but if any gentleman or any representatives of the public come here and want to give evidence, and the Committee thinks that the evidence might be advantageous, we ought to hear them.

Mr. CHEVRIER: So far as I am concerned, since the Committee has made a ruling that Mr. Kennedy be heard, I have no objection. But does this ruling apply only to Mr. Kennedy? If it does not, we may as well make up our minds to stay here until the end of the Session.

The CHAIRMAN: The ruling has been made out of courtesy to Mr. Kennedy. It seems only fair that having come so far to offer his evidence we should hear him.

MR. CHEVRIER: I agree with that, and I hope that my remarks will not be construed as indicating any lack of courtesy to Mr. Kennedy. I do not know what his evidence will be, but now that the Committee has ruled that Mr. Kennedy be heard, is that ruling to apply to any others, or is it definitely understood that after Mr. Kennedy has given his evidence, no other evidence will be heard under any consideration.

THE CHAIRMAN: I suggest that some one make a motion that no other evidence be heard.

MR. HOCKEN: I suggest that the telegram that I have submitted to you be read before the Committee come to any decision.

THE CLERK: (Reads.)

"TORONTO, Ont., April 15, 1925.

H. C. HOCKEN, M.P.,
Ottawa, Ont.

"Toronto Writers' Club interested in licensing clauses Copyright Act. Might want to put in evidence. Please inform as to method of having Committee call witness and whether expenses of witness must be borne by Club.

(Sgd.) ALAN M. IRWIN,
Secretary.

65 Yonge street, Toronto."

MR. CHEVRIER: May I ask what that Club is, what is its membership, and how representative it is?

MR. HOCKEN: I do not think it is very large or very important. I am not concerned whether they come or not.

MR. CHEVRIER: I am only anxious to get through and stop the flow of evidence.

THE CHAIRMAN: Will some one make a motion that after hearing Mr. Kennedy we hear no further witnesses?

MR. LADNER: I would move that after hearing Mr. Kennedy the Committee proceed to the consideration of the clauses of the bill.

MR. CHEVRIER: I am agreeable to that, only I would like to know whether after that the evidence will be closed.

MR. LADNER: We can only speak for ourselves.

MR. CHEVRIER: Of course, if at any time the majority of the Committee desires to hear any one else, the majority will rule, but I think the policy should be that after hearing Mr. Kennedy's evidence we hear no more, because it means that some one else will want to give evidence in rebuttal, and we will never get through. I am satisfied to take a chance on my case with the evidence we have.

Motion agreed to.

THE CLERK: Mr. E. Blake Robertson, who represents the printing and publishing and radio interests, has submitted a list of amendments to the Copyright Act. The members of the Committee have each been furnished with the list of proposed amendments. Then Mr. Robertson has submitted a list of amendments that were suggested by Mr. Berliner in his evidence. That list is also in the hands of each member of the Committee. We have also a communication from Mr. Robertson commenting upon the evidence given by Mr. Burkan. It is quite lengthy. I have endeavoured to have copies prepared for each member of the Committee, and I would suggest that from the nature of the communication, it might be well to have a copy sent to Mr. Burkan to enable him to reply to the comments therein made.

The CHAIRMAN: Is it the pleasure of the Committee that we forward a copy of his communication to Mr. Burkan so that he can make his reply and the Committee can take up the two together?

Carried.

The CLERK: Then I have a communication from Mr. Marquis addressed to the Chairman. (Reads.)

OTTAWA, April 11, 1925.

"W. G. RAYMOND, Esq., M.P.,
House of Commons,
Ottawa.

My dear Mr. Raymond:

My attention was recently called to the reported evidence given under oath by Mr. E. Blake Robertson, which appears on page 107 of the proceedings and evidence taken before the Special Committee of the Copyright Act, 1921. I am greatly surprised at the nature of the evidence given by Mr. Blake Robertson. I did not think he was an accredited representative of this publishing house. I, at once, communicated with the officials of the Ryerson Press, and received in reply the accompanying communication from Dr. Lorne Pierce, editor and literary advisor of the House.

You will note that Dr. Lorne Pierce states that Dr. Fallis, the book steward, general manager and head of the Ryerson Press, does not even know Mr. E. Blake Robertson, and that he is in no way a representative of the House.

You will likewise note that Dr. Pierce, editor and literary advisor, states that in his opinion, in the interest of publishing and in the interest of the Canadian authors, the Copyright Act demands revision as the authors urge.

I would add that I am closely associated with Ryerson Press, not only in the editorial work of the House, but I am also manager of one of the sales departments, and am therefore thoroughly conversant with all matters concerning the Ryerson Press.

Yours very truly,

T. G. MARQUIS."

TORONTO, Canada,

April 8, 1925.

"My dear Mr. MARQUIS:

Dr. Fallis does not know who Mr. Blake Robertson is. He does not represent us. Dr. Fallis is certainly not taking sides against the authors. As for me I am 100 per cent for them. The Act does not affect us at all. The ethical issue, it seems to me, demands revision as the authors urge. Can you find out where these folk-*tales re* the R.P. originate?

In haste,

Yours sincerely,

LORNE PIERCE."

HOWARD ANGUS KENNEDY called and sworn.

The WITNESS: My evidence, as I promised, shall be very short indeed—

By Mr. Chevrier:

Q. Mr. Kennedy, whom do you represent?—A. The Montreal Branch of the Canadian Authors' Association. We had a meeting on Tuesday night at which I was requested to represent the association at the first opportunity at a meeting of this Committee.

Q. Is that the same association to which Mr. Justice Surveyer referred?—A. He is our president—the president of the Montreal Branch. They left it to my discretion, and I hope I will not be indiscreet. At any rate, I will be brief. I will hardly more than touch upon the financial aspect of the question. I should begin, perhaps, by saying it does not concern me. I am one of those amphibians—in this respect only, like Professor Leacock—that I was born in the Old Country, although I became a Canadian 44 years ago and I have always considered myself a Canadian, and a very enthusiastic one. I understand that, owing to my birth, I am exempt from these licensing clauses. That may be a legal question. But all the more I feel it my duty to represent to the Committee how these licensing clauses infringe not merely upon the financial rights of the authors, but transgress what I have been brought up—in an old fashioned way, perhaps—to regard as the elementary A.B.C. of morals. I cannot understand, and we cannot understand, how a printer—I have been associated with many printers in the most friendly way in business and social life from my earliest youth,—and I cannot understand how any honest printer can come and take possession of what I produce, nor how a government and a parliament, of which we are proud, can abet a printer in spite of my will and wish, in taking possession of what I produce. Supposing a member of this Committee—Mr. Hocken, for instance, my friend from Toronto—has a garden; I would have just as much right to go into his garden and pick the flowers and do what I liked with it as he or a printer or anybody else would have to come and take possession of what I produce in a literary form, regardless of my desires entirely. I have called that legalized piracy, and it is, at the present moment, a piracy that is permitted by the statute books. I, and we as an association, claim that it is absolutely immoral. I might use all the strong words which will represent this piracy to you—

Mr. HOCKEN: Do not hesitate.

Mr. HEALY: They might be all appropriate but I doubt if they will have any effect.

The WITNESS: I consider, at any rate, if I was an author subject to these licensing clauses, and they were put into effect against me, I should then be the victim of a robbery; that is all. Supposing—and I understand it is actually argued—that these licensing clauses act or will act or may act to the financial benefit of the authors, then I should have just as much objection as any poor political prisoner has to being subjected to compulsory feeding by a stomach pump, or however they do it. I promised to be brief, and all that is necessary in my evidence is to say that our branch of the association unanimously and very strongly urges this Committee and the Parliament of Canada to repeal these licensing clauses as absolutely immoral.

By Mr. Ladner:

Q. Supposing these licensing clauses were allowed to remain with respect to periodicals and publications of that kind: Would you find them still immoral?—A. I should consider them immoral under any circumstances.

[Mr. Howard Angus Kennedy.]

Q. From the point of view of your association would you consider that a law of this kind would be objectionable?—A. Being immoral, I should call it objectionable.

Q. Of course, it is all a matter of opinion whether these things are immoral or not?—A. Yes; my opinion may be wrong, or the association may be wrong. I have tried to look at it from the printers' point of view. As I say, I have had the most pleasant relations with printers as well as publishers.

Q. Supposing the licensing clauses, as far as books are concerned, were repealed, to give the author—as would seem to be reasonable—the sole control over his books, printing and everything, but so far as magazines, like MacLean's, for instance, and periodicals like that, the licensing clauses remain so that they may obtain writings which otherwise they could not obtain—so far as the country's interest is concerned, would you have any objection to a law of that kind?—A. I am glad that the country's interests have been mentioned at last.

Q. I might tell you that is the point of view I am taking myself.—A. I might say that if the country chooses to install a purely socialistic system, if it decides to become purely socialistic and take possession of all private property in the name of the country, I shrug my shoulders and say "All right"; that will not prevent me from writing; I will keep on writing because I want to write, when I think I have something worth writing, but you cannot run with the hare and the hounds at the same time; you have to be socialistic or not socialistic.

Q. Are there not many laws of a socialistic kind which are advantageous to the country at large?—A. They tend that way, certainly. I do not know if there is any law which empowers a private individual, like a printer, with the connivance of a public individual, a minister, to take possession of my property, the product of my brain, my literary property. You can take possession, and do take possession of private property for the country's use in the way of taxation.

Q. Mr. Kennedy, did you know that before statute law was passed the authors had no rights whatever over their publications?—A. I suppose it was a question—I have read the history—

Q. The authors came to Parliament and asked the special right of having complete jurisdiction over their property?—A. Yes, you know how the authors were suffering through the absence of any control of piracy and a Copyright Act was passed, and that Act, properly, I think, should have given the author just as much right over that form of his property as over any other form of his property. But it did not, and we bow to the inevitable. We cannot get unlimited copyright in our work. We know that. But we can fight tooth and nail against any further limitations like these.

Q. In the opinion of many of us who have heard the evidence—some of us are of the opinion that all these matters which engaged Parliament, at once affect the rest of society. You have to weigh the interests of the whole country. That is what it comes down to. Now we will turn to the point of my original question. Supposing a law was made so as to eliminate the licensing clauses as they apply to author's books and publications of that kind, but allowed the licensing clauses to remain so far as they affected periodicals—in other words, a concern like MacLean's could have a first class story and publish it in Canada, in an atmosphere of this country, for the benefit of this country—

—A. Personally, I should be inclined to say that half a loaf is better than no bread. I am not instructed by my association so I do not like to express an opinion on that point, but as the question of magazine publications has been brought up, I want to say that I have felt as much as anybody the need of helping our serials, our national serials. I think it is one of the questions which might well concern Parliament, how to deal effectively with this flood of alien

[Mr. Howard Angus Kennedy.]

matter—I will not call it literature—which is necessarily overwhelmingly successful in competition with our national serials. That is not, I understand, within the scope of this Committee. I only wish that Parliament and the Government would take up that matter and see what could be done, and certainly the first thing to be done should not be an act of thievery, which this would be—I cannot see, even to assist MacLean's Magazine, that they should be empowered to do a thing which, in a private individual, would be characterized as theft.

Q. From a business point of view, would anybody be seriously hurt if the licensing clauses were allowed to remain in respect to serials?—A. I am afraid I must confess I cannot answer that question. The question has been discussed by persons who are intimately connected with serial publications, which I, personally, am not.

By Mr. Healy:

Q. Mr. Kennedy, will you give us the names of some of the books of which you are the author, for the information of this Committee?—A. I may say that they have all been published either in the Old Country or in this country; some of them in both. The first was "The Story of Canada." I projected and carried out the "Story of the Empire" series at the time of Queen Victoria's Diamond Jubilee. I myself wrote the volume "The Story of Canada" which has had a very large circulation over there as well as over here. Then there was, "New Canada and the new Canadians." I was connected with the London Times then—this was in 1906, after the new provinces had been formed. I went through the new provinces and described them in this book, first in The Times and then in a book, for which Lord Strathcona kindly wrote the introduction. That was published by Marshall in London and Musson in Canada, but it was printed in London. There were two biographies, one, "Professor Blackie, His Sayings, and Doings," published in England alone, and "Old Highland Days," embodying the life of my father, Dr. John Kennedy. The book that has had the widest circulation is a purely Canadian book, although it is not known very well in Canada. Its widest circulation is in the United States. It is called, "The New World Fairy Book," embodying the old legends and traditions of Indians and others. That was published by Dent, who has a house in Toronto as well as in London, but printed in London. It is published in the United States by Dutton, but printed entirely in England. There is a book just coming out being published by the Ryerson Press, the proofs of which I am just passing, "The Book of the West."

Q. That is to be printed here?—A. Yes, that is being printed now in Toronto. That is all, except small things. I have written several books for the Canadian Government at different times, on different parts of Canada.

The CHAIRMAN: Any further questions, gentlemen?

By Mr. Hocken:

Q. I would like to ask Mr. Kennedy if he can tell us of any instance within his knowledge where an author has suffered financially by reason of the licensing clauses?—A. No sir, I have not looked into the matter in the least. I have left that to others. As I say, my plea and my arguments are entirely independent of that.

By Mr. Chevrier:

Q. And you are not aware of any case where the printer has been benefited by the operation of the licensing clauses?—A. No, sir.

The CHAIRMAN: Thank you.

The WITNESS: I thank you for your courtesy, and I apologize for breaking in, as it appears I have done.

The witness retired.

The Committee proceeded to the consideration of Bill No. 2.

[Mr. Howard Angus Kennedy.]

APPENDIX TO EVIDENCE

Memorandum from Canadian Music Publishers and Dealers Association, Toronto, *re* Copyright Legislation.

Memorandum from Mr. Geo. F. O'Halloran, Commissioner of Patents, *re* interpretation of "performance," etc.

Telegrams from Various Branches of the Canadian Authors' Association, *re* Licensing Clauses.

Statement from Mr. Henry T. Jamieson, Chairman of Performing Right Society, *re* Evidence, etc.

Communication,—Whaley, Royce & Co. Limited, Toronto, *re* Proposal of Mr. E. M. Berliner.

Communication,—From Dr. Samuel W. Fallis, Toronto, *re* Mr. T. G. Marquis and Mr. E. Blake Robertson, *re* Evidence.

Synopses of Communications received, March 26th to April 13th.

Decisions of the United States Courts and Civil Division of Hamburg, Germany, *re* Copyrighted Music.



MEMORANDUM RE CANADIAN COPYRIGHT LAW AND SUGGESTED
AMENDMENT AS CONTAINED IN BILL TWO, MARCH, 1925

FROM THE CANADIAN MUSIC PUBLISHERS AND DEALERS ASSOCIATION

TELEGRAM

TORONTO, ONT., 16th March, 1925.

W. G. RAYMOND, M.P.,

Chairman Copyright Committee Parliament Buildings, Ottawa, Ont.

We expect that the memorandum submitted to you recently by this association on copyright matters will be read to the Committee and placed in the evidence your co-operation to this end is urgently requested.

Canadian Music Publishers and Dealers Association.

WHALEY, ROYCE & Co., LIMITED

237 YONGE STREET,

TORONTO, CAN., March 11, 1925.

W. G. RAYMOND, Esq., M.P.,

Chairman Copyright Committee,

Parliament Bldgs.,

Ottawa, Ontario.

DEAR SIR,—Enclosed you will find a memorandum on the subject of copyright and pertaining particularly to the discussion now going on in your Committee relative to Bill 2, and the suggested amendment, to the present Copyright Act.

This memo. covers pretty well, the ideas of the association sponsoring it, and we would appreciate it very much, if you would find some means by which this article can be read to the members of the Committee.

We are,

Yours very truly,

The CANADIAN MUSIC PUBL. & DEALERS ASSOCIATION,
Per H. R. Maddock.

The Canadian music publishers and dealers view with much concern any attempt to introduce new copyright legislation at this time. We appreciate the fact that the Act of 1921 as amended in 1923 was brought into force on January 1, 1924, largely to correct injustices of the old copyright law of Canada, especially as regards the authors and composers of music. We hold that the new Law should operate for at least ten years before attempting to modify it, especially as it is working fairly satisfactorily, and no one is suffering any particular injustice.

The copyright law is the basis of the music industry—particularly the sheet music industry—and we feel that what Canada needs at the present time is

"tranquility". It is difficult to develop any business at the present time, but these difficulties will be greatly magnified if the legal foundations of our business are to be undermined from time to time by tinkering with the copyright law.

While assuming the general position that the law as it stands is a satisfactory compromise, this association wishes to state certain principles that should underlie any legislation on the subject of copyright.

RE-LICENSING CLAUSES

While no actual licenses have been granted in the field of music, yet the publication of certain works has been granted to Canadians as a result of these clauses. This association is in favour of the *retention of these provisions*.

RE RADIO BROADCASTING

This association is firmly convinced that the *present Act fully covers the broadcasting of music by radio*. Stripped of any verbal quibbles, the fact remains that radio presents the latest and most effective means of making ideas public. Copyright is designed to protect the making public—or publication—of any literary or musical work. It covers publication by means of manuscript, vocal rendition, printing press, moving picture and gramophone. Is there any reason to suppose that the principle of copyright should not apply to the newest method of disseminating ideas by mechanical means—viz. radio?

This principle is recognized in Great Britain where the British Broadcasting Company, which has been granted a monopoly in broadcasting, pays the copyright owner a small fee for every rendition of his work. The Government of Australia have recognized the rights of the author and share with him their receipts from license fees charged for owning a receiving set. In the United States the courts have held in two cases out of three that radio is a public performance under the Act and the third has been appealed and is awaiting judgment. In the face of these precedents, would it not be rash for Canada to bring down radio broadcasting legislation, especially when there has been no attempt whatever on the part of copyright owners to interfere in any way with the broadcasting of music in Canada?

This association favours the reasonable control of copyright property, rather than drastic penalties or heavy charges imposed on broadcasters. While the sales of radio appliances have increased phenomenally, the sales of sheet music has steadily declined. The importations of sheet music and music books in 1924, were only 70 per cent of their value in 1920, this in spite of the fact that popular music retailed in 1920 at fifteen cents per copy as against thirty-five cents as at present. The total sales of single hits have steadily decreased since the advent of radio.

It is true that certain songs have been popularized by radio. "It AIN'T GOING TO RAIN NO MO'" is probably the most outstanding instance. A canvas of the sheet music dealers shows that the total sales of popular music have decreased in about the same ratio as the imports have declined over the period of the development of radio.

It is claimed that radio offers remarkable publicity for popular songs. This is quite true. However, in the music business, too much publicity is at times even more harmful than too little. You may be attracted by a melody the second or third time you hear it but by the tenth time you are tired of it and at the fifteenth, it is an undoubted cause of profanity. Radio listeners

have often noted the same tune from ten to twenty times the same evening. Thus too much publicity tends to kill a good song permanently while too little at least leaves the author some hope.

The Dumbells Company is now starting to tour Canada eastward from Vancouver with a new review entitled "OH YES". They have requested that the sheet music and phonograph records be not sold before their appearance in any locality. Many of their songs are comic songs which lost their point by repetition. You realize that a joke told once provokes a laugh, but after frequent repetitions, its sponsor becomes a subject for pity. A comic song is just a joke set to melody. The performers want to be the first to exploit them. Such shows represent an investment of many thousands of dollars and of course, the investment in the theatre is jeopardized as well.

Canadian authors, composers and publishers do not seek to unduly restrict and hamper broadcasting. They want to co-operate with the broadcasters of music to the end that their programmes will be of a better type and will include more works of Canadian authorship. They do urge, however, that some means be devised whereby the author may receive some recognition for his work and some semblance of control over where and when his creations shall be given to the public.

This association is not in sympathy with the method employed by the copyright owners in the United States, viz., imposing a fee upon the broadcasting stations or the withholding of their works from radio programmes. We favour a system whereby say ten per cent of the fees collected by the Government both from receivers and broadcasters, be distributed amongst copyright owners in proportion as their works are programmed by radio stations. This would give the composers, authors and publishers an interest in the development and extension of radio and at the same time, permit them to occasionally withhold some number, the broadcasting of which, would be detrimental to their interests. Canada's method of optional registration makes this plan even more feasible here than in Australia.

This association is prepared to suggest a plan that will recognize the rights of Canadian authors, composers and copyright owners generally and will at the same time, leave the broadcasting stations unhampered use of ninety-nine per cent of the world's music. We would say one hundred per cent except for the fact that in some instances, we believe it might be advisable to *withhold the broadcasting of certain songs for certain periods in fairness to the copyright owners and even to the broadcasters themselves.*

The sheet music interests of Canada believe that "harmony" should be the key note of all the allied music interests including the radio interests. A fair recognition of the authors' and composers' rights as well as the necessities of the broadcasters will insure "harmony" in the entire music industry. We feel the problem is far from being incapable of solution. *Time is, however, required* to solve this problem. The developments of radio are so rapid and the question being an international one, we see no reason why hasty legislation should be adopted in Canada, until the courts have decided the question in the United States and until the convention of Berne has definitely ruled on the subject of radio.

For this reason, we believe it highly desirable that no copyright legislation in reference to radio be adopted at the present session.

Regarding Mechanical Royalties.

The relations between the music publishers of Canada, the Canadian authors and composers and the various phonograph companies have been most cordial. The present law is a compromise between the extreme positions of the

authors and composers on one hand and the phonograph interests on the other. The authors wanted unlimited control over their compositions, and the unrestrained right of bargaining with the makers of records exactly as they now do with music publishers. On the other hand, the phonograph interest wanted a continuation of "free music" as they enjoyed it up to 1924. The copyright law of Canada says to the author "you may withhold your composition from being recorded if you wish, but if you let one company make your record, then you must let every other Canadian manufacturer do the same thing and the rate of royalty the manufacturer shall pay you, must be two cents." The law imposes these conditions of sale upon the author or his representative. By what other law is the property owner so limited in the sale of his property?

In the United States a general practice has developed between the copyright owners and the record manufacturers to allow the mechanical companies to deduct ten per cent from the royalties due. This condition was agreed to by the copyright owners because the United States law imposes the royalty upon the number of records *manufactured* and not on the sale. It was pointed out by the phonograph interests that necessarily more records would be manufactured than would be sold and that a certain amount would be lost and broken in transit, etc. The authors, composers and publishers agreed to the ten per cent reduction as a reasonable proposition.

In Canada, however, the Act reads 'made and sold', so that there is not the same reason for withholding this ten per cent. In the United States, the royalty is on the manufacture, while in Canada, it is on the sale. In view of conditions existing in the record industry and its competition with radio as a means of home entertainment, Canadian publishers agreed to accept the ten per cent deduction even in this country.

We cite this to show that the attitude of the Canadian authors, composers and publishers has been one of moderation and fair play. We have by no means tried to exact the last pound of flesh from any manufacturing industry, but have tried to deal equitably, even generously with the manufacturing interest with whom we are associated.

Here again, we see no reason why any change in the law should be made. Let it work for a few years and if it needs modification, let the Canadian record makers and the Canadian copyright owners, first discuss the matter and see if a mutually satisfactory basis can not be agreed upon before rushing legislation through Parliament on this tremendously important question.

REGISTRATION

We recognize the fact that registration cannot be made compulsory in Canada under the present constitution of the Berne convention. However, we believe that any of the added benefits given copyright owners, should as far as possible, be made contingent upon registration at Ottawa, and that no action for infringement may be brought until a copyright has been registered for at least three months. Furthermore, we believe Canada should strongly urge upon the next convention of Berne, the necessity of compulsory registration.

RE-PENALTIES

It is not reasonable or fair, that penalties for infringement and importation of reprint copies of music should be exacted to the extent that is suggested in this proposed amendment to the Copyright Act, because as we all know, compulsory registration is not a provision of the Act. If it were a provision of the Act, no objection could or would be taken to the proposed amendment, for then a dealer

or other individuals, would have exact and certain means to inform himself as to what is copyrighted and could act accordingly, and intelligently and could avoid infringing.

We do not believe that there are many who deliberately infringe by importation knowingly, and rather than use methods that savor of 'black-jacking' the community, education, instruction and good will should be the key note.

To conclude, we strongly urge that if the Act is to be changed, in this respect, that a provision or clause be inserted to the effect that an action for damage for infringement can only take place after registration and that such registration must have been in force at least for three months. This would as you will observe, give ample time to an individual to search for ownership and to inform himself of the validity of copyright.

The foregoing, Gentlemen, is an attempt to express the opinion of those publishers, dealers and distributors of music in Canada who largely are most concerned. We are prepared to leave the matter in the hands of the Committee, knowing full well, that nothing will be done that will upset conditions at this time of difficulty and unsettled conditions generally, unless of mighty urgency which we do not believe exists, since all parties were seemingly satisfied until this amendment appeared.

MEMORANDUM *RE* PROPOSED AMENDMENT OF SUB-CLAUSE (4) OF CLAUSE 2 OF BILL NO. 2 TO AMEND THE COPYRIGHT ACT, 1921.

If the amendment be made as proposed par. (q) of sec. 2 of the Act will read as follows:—

“‘performance’ means any acoustic execution of a work or any visual representation of any dramatic action in the work, including such execution or representation made by means of any mechanical instrument and any communication, diffusion, reproduction, execution, representation or radio-broadcasting of any such work by wireless telephony, telegraphy, radio or other kindred process. Provided that any communication, diffusion, reproduction, execution, representation or radio-broadcasting by any such wireless, radio or other kindred process, when made for no gain or interest direct or indirect, shall not constitute a performance under this paragraph”.

The right given the author by the Canadian Act in respect of the public performance of his work is identical with that given by the Imperial Copyright Act, 1911. See par. (q) of sec. 2 and s.s. (1) of sec. 3 of the Canadian Act and s.s. (2) of sec. 1 and sec. 35 (definition of Performance) of the Imperial Act.

This right gives the author the control of the public performance of his work and is understood to include the broadcasting thereof.

Canada enjoys the benefit of the Imperial Act by virtue of s.s. (2) of sec. 25 thereof which is as follows:—

“(2) If the Secretary of State certifies by notice published in the London Gazette that any self-governing dominion has passed legislation under which works, the authors whereof were at the date of the making of the works British subjects resident elsewhere than in the dominion or (not being British subjects) were resident in the parts of His Majesty's dominions to which this Act extends, enjoy within the dominion rights substantially identical with those conferred by this Act, then, whilst such legislation continues in force, the dominion shall,

for the purposes of the rights conferred by this Act, be treated as if it were a dominion to which this Act extends; and it shall be lawful for the Secretary of State to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, manufactured in a foreign country, under the law of the dominion, differ from those under this Act."

Prior to the coming into force of the Canadian Act, the Imperial authorities having satisfied themselves that the Canadian Act met the requirements of s.s. (2) of sec. 25 of the Imperial Act issued in favour of Canada the certificate therein provided and the same became effective on the first of January, 1924, the date of the coming into force of the Canadian Act.

All British subjects and residents within His Majesty's dominions are given the benefit of the Canadian Act by s.s. (1) of section 4 thereof.

The proposed amendment, as it is understood, would have the effect of curtailing and restricting the author's control of the public performance of his work. If made it might be said that Canada no longer meets the requirements of the Imperial Act to entitle her to the benefit thereof.

It is not clear what the effect of the proposed amendment would be in regard to the Revised Berne Convention as the Convention gives the adhering countries a good deal of latitude in the way of domestic legislation. It might be held to conflict with Article 13. There is no doubt that many of the adhering countries would consider the amendment repugnant to the spirit of the Convention.

The reciprocal arrangement with the United States is based on the Canadian Act as it stands. No opinion will be ventured as to how that country would regard the proposed change in the law.

GEO. F. O'HALLORAN
Commissioner of Patents.

March 30th, 1925.

TELEGRAMS

Winnipeg, Man., March 28, 1925.

Chairman Copyright Committee,
House of Commons, Ottawa.

Winnipeg authors consider licensing clauses dishonest, harmful, tyrannical, and urge repeal.

WATSON KIRKCONNELL,
Winnipeg Board Secretary.

4.40 p.m.

Victoria, B.C., March 28, 1925.

Chairman Copyright Committee,
Ottawa.

This branch strongly urge parliament repeal licensing clause Copyright Act.

A. DEB SHAW,
Pres. V. and I. Branch C.A.A.

Halifax, N.S., March 29, 1925.

Chairman Copyright Committee, 623,
House of Commons, Ottawa, Ont.

On behalf of the Maritime Provinces Branch of the Canadian Authors Association I would urge most respectfully that parliament be requested to repeal the injurious licensing clauses in the present Copyright Act because they are prejudicial to our interests and wrong in principle.

ARCHIBALD McMECHAN,
Vice-President.

Regina, Sask., 29-30 March, 1925.

Chairman Copyright Committee,
House of Commons, Ottawa, Ont.

Saskatchewan Branch Canadian Authors Association by unanimous resolution strongly urge repeal of licensing clause of Copyright Act as being wrong in principle and extremely unjust to Canadian authors on behalf of the Association.

AUSTIN BOTHWELL.

London, Ont., March 30, 1925.

Chairman Copyright Committee,
House of Commons, Ottawa.

Western Ontario Branch Canadian Authors Association strongly urge repeal of licensing clauses of Copyright Act as wrong in principle and unjust to Canadian authors.

ESTHER MacGREGOR,
MARION KEITH.

STATEMENT

ROYAL BANK BUILDING,

Toronto, 27th March, 1925.

Re Bill No. 2, Copyright Act, 1921, Performing Right Society, Limited,

W. G. RAYMOND, Esq., M.P.,
 Chairman, Special Committee,
 House of Commons,
 Ottawa.

Dear SIR,—Referring to my evidence as recorded in "Proceedings and Evidence." No. 4, dated Tuesday, 17th March, 1925, page 138 (top), being cable received from Performing Right Society, London and quoted by me, and also referring to page 139, question by Mr. Ladner, who asked,

(Q) In what respect would the radio free broadcasting be an infringement of the Berne Convention.

(A) That is the statement of my principals which I submit for what it is worth.

I had already previously explained that I was not versed in copyright law, but would be glad to obtain for my principals any information required. They have given me the required explanation and which answers the question. The Performing Right Society, Limited, of London, (my principals) write me as follows:—

"We apprehend you are aware that the Berne Convention (1886), as revised by the Additional Act of Paris and the Berlin Convention of 1908, constituted the contracting States a union for the protection of the rights of authors in their literary and artistic works. Practically all the civilized countries of the world are represented by the Convention in copyright matters, its fundamental principle being that

'authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to natives as well as the rights specially granted by the present convention.'"

(Their quotation is article 4 of the revised Berne Convention, as appearing in the second Schedule, page 26, of the Copyright Act, 1921).

"The proposal, therefore, to deprive authors of their rights in regard to the public performance of their works by wireless, would be in direct violation of the principles of the International Copyright Union, to which Canada has signified her adhesion, to take effect from 1st January, 1924.

Generally. We consider there is no more justification for depriving the author of his rights in regard to broadcasting, than of any other of the rights which he has been given by statute in practically all the civilized countries of the world. No doubt considerable sums are spent in orchestras, singers and otherwise in providing a broadcasting service for the entertainment of the public. There is no logical reason, therefore, why the copyright owner should not also receive some monetary compensation for the use of his property in that connection."

My principals further advise as follows:—

“In reply to your request that we should write you fully on this matter, we can only say that so far as broadcasting in this country is concerned, we had no difficulty in getting the British Broadcasting Company, Limited to recognize the rights of our members in their copyright musical works as represented by this society. When broadcasting was commenced in this country, the British Broadcasting Company did not contest the rights of copyright owners, and they voluntarily agreed to make payment for the use of copyright musical works by wireless, not only for the rights represented by this Society, but also by other bodies, including the society representing literary and dramatic authors.

As indicated in our cablegram of the 14th inst., the Australian Federal Government in its Statutory Rules in regard to Broadcasting, which came into force on the 17th July, 1924, included a regulation to the following effect:—

‘It shall be a condition of the granting of any broadcasting license that the license shall not—(a) Transmit any work or part of a work in which copyright subsists except with the consent of the owner of the copyright.’

Some months ago we entered into agreements with the various broadcasting companies in Australia, under which payment is made by those companies for the broadcasting of copyright musical works.

We have also just received news from our controller, who is at present in South Africa, that the broadcasters there fully recognize the legal rights of copyright owners in regard to the broadcasting of copyright music; they have no intention of contesting them, and negotiations are now on foot as to the terms on which the necessary license or permission is to be granted, so far as this Society’s repertoire is concerned.

With regard to the United States of America, you are no doubt aware that an attempt was made last year to amend the Copyright Act 1909, by providing that the Act

‘shall not extend to public performances, whether for profit or without profit, of musical compositions, whether such performances be made from printed or written sheets, or by reproducing devices issued under the authority of the owners of the copyright, or by the use of the radio or telephone or both.’

This bill was strongly contested by the American Society of Composers, Authors and Publishers, and others, and as a result we understand that the bill has not been proceeded with. A full Report of the Hearings before a Sub-Committee of the Committee on Patents of the U.S. Senate on the Bill (No. S. 2600) on April 9th, 17th and 18th, 1924, has been printed, and we believe can be obtained from the Government Printing Office, Washington.

We believe that a new bill is now before Congress for amendment of the Copyright Act, 1909. The effect of this new bill, however, is to strengthen the position of the author, and to bring the copyright law of the United States into line with that of other countries which have adhered to the Berne Convention, and the bill, as it at present stands, specifically reserves to the author the right of broadcasting.”

I trust this information will be useful to the Committee.

Faithfully yours,

H. T. JAMIESON.

COMMUNICATION

237 YONGE STREET, TORONTO, CAN., March 28th, 1925.

W. G. RAYMOND, M.P.,
Chairman Copyright Committee,
Parliament Buildings,
Ottawa, Ontario.

Dear Mr. RAYMOND:—With reference to the proposal suggested by Mr. E. M. Berliner of Montreal, and which is outlined in Page Seventy-four, of Number Three of the "Proceedings and Evidence" re Bill Two, now before your Committee, we wish to state emphatically, that we do not as a Company, agree at all to the following suggestion:—

"That the provisions of this Act, in so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically, musical works, shall apply only to compositions published on or after January 1st, 1924, and registered for copyright in Canada."

If this provision were to become law, it would deprive authors and composers of a very large amount of remuneration from copyright works.

This Company represents many interests that have to be protected and are at present protected under the law, and we could not allow this suggestion to go unnoticed without serious and strenuous objection. We sincerely hope that nothing of the kind will be inserted into the Act. We hope that your Committee will not permit this to be inserted, and that it will not be considered seriously by you.

We also wish to state that we are in entire accord with the evidence given before your Committee by Mr. Gordon V. Thompson of this city. Mr. Thompson has placed the matter before you from the practical standpoint, in the clearest light possible, but did not stress the point which we regard as very important, and which we have referred to above.

We are,

Yours very truly,

Whaley, Royce & Co. Limited,
Holmes Maddock.

HRM/ES

THE METHODIST BOOK ROOM, TORONTO, CANADA

SAMUEL W. FALLIS, *Book Steward*

TORONTO, April 20, 1925.

W. G. RAYMOND, Esq., M.P.,
Chairman, Copyright Committee,
Room 413,
House of Commons, Ottawa, Ont.

Dear Mr. RAYMOND,—My attention has been called to certain letters appearing on page 263, Proceedings and Evidence No. 9, Special Committee on Bill No. 2, *re Copyright Act*.

I wish to say that these letters are unauthorized. Mr. Marquis does not represent me on this matter and in undertaking to do so has fallen into the very error he condemns in another.

It is true I do not know Mr. Blake Robertson and he does not represent the Ryerson Press, except that he was quite within his rights in using the telegram sent to Mr. Sutherland, Secretary of the Toronto Typothetae by the superintendent of our factory. This telegram was despatched in good faith by Mr. Cope in my absence and I wish you would be good enough to tell your Committee that I have no intention of repudiating it. Mr. Cope had every right to assume that such would be my attitude, since he knew that previously we had given our support to the clauses in dispute. When I returned I began impartially to study the Act to read the claims of authors, publishers and printers and the evidence as presented to the Committee. I gather from the Act that:

1. A publisher cannot, under any circumstances, take the work of an author, whether book or serial, without remuneration, which would never be less in Canada under the licensing provision, than he is receiving in the United States for his Canadian rights.

2. The applicant, that is, the publisher, may go direct to the Department of Copyright with his request for publication privileges under the licensing clauses, but the author must be brought into the consideration at once or it goes no further except on default of the author.

3. The author has every opportunity of showing to the department just cause for refusing the application of the publisher.

4. The applicant for license must give satisfactory security to the department for the payment of all such royalties.

5. The clauses are designed in the national interest to create work within Canada, which otherwise would be done outside.

Therefore, I have concluded that the authors are making a great ado about nothing, sincerely no doubt, but nevertheless mistakenly. I cannot see where their interests would suffer at any point. In no case will they receive less for their work under the operation of the clauses and in some cases may even receive more. The only claim having any force is that the author has the inherent right to say what shall become of the child of his brain, but on closer examination even that must be modified. To assert that the licensing clauses make possible the theft of an author's product by a publisher is to use rather robust language that to me is not very impressive.

No person has the right, in the absolute sense, to even the child of his brain, whether it be the invention of a mechanical device or a story, except perhaps as he wishes to keep it entirely to himself. The moment he seeks publicity for it he must do so under certain national regulations, which have in mind not a class but all classes in the community. So long as the principle of protection is recognized in Canada it cannot very well be argued that its application anywhere, with the national interest in mind, is unmoral and unethical, and privileges granted under it characterized as thievery.

If I were to judge from our experience since the Licensing Clauses became operative, I would say that it will make little difference to us as a House what becomes of the Clauses, but I feel that the period has been too short to base a judgment upon, so believe the Clauses ought to stand for further trial.

Yours very truly,

(Sgd.) SAMUEL W. FALLIS.

NOTE.—It was observed that this letter was not written on paper bearing the official heading of the Ryerson Press, and that no official position was attached to the signature of Dr. Fallis.

COMMUNICATIONS AND RESOLUTIONS

Synopses of Communications and Resolutions received during the Easter Recess.

Decisions of United States Courts, marked A, B, and C, in respect to Copyrighted Works.

Decision of a Case in Hamburg, Germany, marked D.



MONDAY, April 13, 1925.

Synopses of communications received since last meeting of the Committee, containing suggestions and recommendations relating to copyright legislation.

Name and address.	Synopsis of contents.
1. Leo Feist Limited, Toronto, per G. W. Thompson, General Manager, dated March 27th, 1925.	Company would not object to amending the Copyright Act by adding to section 18 the following:— “Provided that no royalties are payable in Canada on records exported to countries in which copyright royalties are paid and collected on said records exported from Canada.”
2. Edmonton Branch, Canadian Authors' Association, per W. Everard Edwards, President, dated March 31st, 1925. (Telegram.)	Urge that Parliament repeal licensing clauses of the Act—Wrong in principle and unjust to Canadian authors.
3. Vancouver Branch, Canadian Authors' Association, per Robt. Allison Hood, Chairman, dated March 30th, 1925. (Telegram.)	Impossible justify depriving author of his ownership in writing for benefit of private interests in <i>ipso dixit</i> of Minister without evidence or hearing—Protest against iniquitous licensing clauses both as discriminating against native born Canadians and as improper interference with their right to dispose of their works as deemed advisable to themselves.
4. Montreal Branch (French and English Sections) Canadian Authors' Association, per Frances Fenwick Williams and Pauline Fréchette, dated March 28th, 1925. (Telegram.)	Sincerely trust that iniquitous, unsound and wholly irrelevant licensing provisions will be removed once and for all from Copyright Act.
5. MacLean's Magazine, Toronto, per J. Vernon McKenzie, Editor, dated March 30th, 1925.	States that a palpable inaccuracy crept into the evidence given by Mrs. Madge Macbeth as reported on page 201 of the proceedings and evidence—Submits correction saying that neither the Toronto <i>Star</i> , nor any other Canadian publication, can reprint articles from MacLean's Magazine without “our permission.” “According to law, any other periodical may publish what is construed to be a ‘reasonable summary,’ or ‘reasonable synopsis,’ but cannot go farther than this.”—“MacLean's Magazine has frequently had requests asking permission to republish, in full, certain articles or even short stories. Whenever these requests have been granted, and payment for same made, it has been our invariable policy to send money on to the author.”

Name and address.

6. The Canadian Women's Press Club, per Miss May S. Clendenan, Secretary, London, Ont., dated March 30th, 1925.
7. The Canadian Booksellers' and Stationers' Association, per Mr. Wm. Tyrrell, First Vice-President, Toronto, received April 11th, from Mr. A. H. Jarvis, President, Ottawa.
8. Victor Talking Machine Company of Canada, per Mr. Edgar M. Berliner, President, Montreal, dated April 7th, 1925.
9. Thermo Electric Limited, per J. A. MacDonald, Manager, Brantford, Ont., dated April 8th, 1925.
10. American Society of Composers, Authors and Publishers, New York City, per J. C. Rosenthal, General Manager, dated April 10th, 1925.

NOTE.—Mr. Rosenthal enclosed with his communication a few copies of the Court's decision in the matter mentioned under "Synopsis of Contents," opposite.

Synopsis of contents.

Desire an amendment that will cancel the licensing clauses of the Act—If the Act is not amended, it shames Canadian authors before the world—making them seem of so little importance that their own country's laws will not protect them—Most strongly endorse the firmest protest possible against the licensing clauses.

Directs attention to section 26, of the Copyright Act, 1921, and asks for its repeal, submitting 14 reasons for repeal of same.—States that said section adds no protection to the work of authors but is designed entirely as commercial protection to a small number of wholesale booksellers and publishers whose aim it is to segregate Canada from the enormous literary benefits which belong to it as part of the British Empire—States further that copyright is designed chiefly for the protection of intellectual and artistic labour and therefore should not include in it anything in the nature of commercial protection other than is absolutely necessary to protect an author's rights.—Also directs attention to section 27, subsection 3, clause (d), as amended in 1923 by chapter 10, section 2, etc., etc.

Directs attention to royalty provisions on records which are exported to other countries where royalties are again collected as given in the evidence, relating to phonograph interests, by himself at page 74, also by Mr. Thompson at page 180, also by Mr. Burkan, at page 230. Mr. Berliner, in this connection, also refers to the communication of Whaley, Royce & Co., at page 260 of the proceedings and evidence—Requests that, if Committee decide to amend the Act, discrimination should be removed wherever discrimination exists—In his reference to section 18 of the Act and its provision governing export conditions, Mr. Berliner suggests the acceptance of the proviso to 18 (2) set out at page 74 of his evidence, or by a slightly amended clause which, he understands, Mr. Thompson has submitted.

Re Radio Industry—Strongly opposes amendment of the Act—States that broadcasting is not a public performance for private gain, but a public utility, giving service to the people free of charge.

Replying to Mr. Ladner's request (page 248 of the proceedings and evidence), re decision rendered on April 9th, 1925, in the United States Circuit Court of Appeals, 6th Circuit, in the case of Jerome H. Remick & Company against American Automobile Accessories Company (operating the Crosley Manufacturing Company broadcasting station "WLW," at Cincinnati). Said decision reversed the decision of Judge Hickenlooper, regarding which testimony was given before the Committee (see pages 233, 234, 248), and from which it was attempted to infer that broadcasting of copyrighted music was not restricted in the United States.

Copy of the decision given by the Hon. D. J. Knox, in the case of Jerome H. Remick & Company, against General Electric Company; also copy of the decision given by District Judge Lynch in the case of M. Witmark & Sons, against L. Bamberger & Company, were filed by Mr. Burkan in the clerk's office on March 30th, 1925.

Memorandum covering opinion relating to the case of Jerome H. Remick & Company, against The American Automobile Accessories Company to dismiss the complaint (District Judge Hickenlooper), is also on file in the clerk's office.

RESOLUTIONS, suggestions and recommendations as contained in the communications which have been submitted to the Committee, are set out in the printed proceedings, as follows:—

Pages 6, 7, 8 and 9.

1. By Mr. L. J. Burpee, relating to protection of authors and the licensing clauses.

Pages 26 and 27

2. By Mr. W. F. Harrison, relating to licensing clauses.

Page 45

3. By Mr. Wallace A. Sutherland, from the Ryerson Press, relating to license clause.

Pages 55 and 56.

4. By Mr. George M. Kelley, relating to repeal of the licensing provisions, which are of particular concern to publishers.

Page 71

5. By Associated Radio of Manitoba, per Mr. J. H. Curle, relating to royalties on copyrighted music and broadcasting of same.

Pages 101 and 102

6. By the Musson Book Company, per Mr. F. F. Appleton, relating to the licensing clauses, book importations and existing copyright regulations—Also desires to withdraw any statements in his evidence which are opposed to certain views. (Telegram and letter.)

Pages 104 and 105

7. By Mr. W. F. Maclean, M.P., and R. L. Wilby *re* raiding of author's rights—Refers to final adjudication of question now pending in United States.

8. By Kelowna Radio Association, B.C., per W. A. Scholl, Secretary (Mr. Stirling, M.P.), relating to royalty on copyrighted music which is broadcasted.

Pages 136, 137

9. By Performing Right Society, London, England, per Mr. Henry T. Jamieson, relating to author's rights.

Page 142

10. By Mr. L. de Montigny, quoting The American Society of Composers, Authors and Publishers, and The Music Publishers' Protective Association, relating to radio broadcasting interests.

Page 145

11. By Mr. L. de Montigny, quoting The Performing Right Society, London, England, relating to authors' rights.

Page 162

12. By Mr. Irvine, M.P., quoting Russell, Lang & Company, Limited, Winnipeg, relating to control of prices of books in Canada under present copyright law.

Pages 245-9

13. By Canadian Music Publishers & Dealers' Association, Toronto, relating to sheet music industry, the authors and composers of music, licensing clauses, and radio broadcasting. —“Mechanical Royalties” Registration, and penalties.

Pages 164-166

14. By The Canadian Manufacturers' Association, Toronto, per Mr. H. Macdonald, Secretary, adhering to the principle of the licensing clauses, and pledging support of any reasonable amendments to secure legal protection of the authors, publishers and others, against infringements and other injustices.

15. By Viscount de Fronsac, transmitted by Hon. R. Lemieux—Approving Bill No. 2, in respect of protection to authors.

16. By The Canadian Women's Press Club, per Miss May Stuart Clendenan, London, Ont., protesting against licensing clause. Also from the same organization, per Lillian S. Scarth, Winnipeg—Resolution protesting against the licensing clauses. Also from the Music Publishers' Association of Great Britain, per Dixie, Secretary.—A cablegram requesting that broadcasting rights be protected, adding that it is highly essential in the interest of copyright owners.

Page 195

17. By the Canadian Booksellers' and Stationers' Association, Toronto, asking for leave to be heard before the Committee—Note, a memorandum was received from this association on April 11, 1925—See No. 7, page 2 herein.

Page 249

18. By Mr. G. F. O'Halloran, Commissioner of Patents—A memorandum setting forth meaning of "performance" under present law, and the right given the author when his work is performed for the public which is understood to include the broadcasting thereof. Also as to how Canada enjoys the benefit of the Imperial Act by virtue of subsection (2) of section 25 thereof. Also as to what effect the proposed amendment would have if subsection (4) (g), section 2 were adopted.

Page 251

19. By various branches of Canadian Authors' Association, urging the repeal of the licensing clauses.

Page 252

20. By Canadian Performing Right Society, Toronto, per Mr. Henry T. Jamieson *re* authors' rights under the Berne Convention in regard to broadcasting.

Page 254

21. By Whaley, Royce & Company, Limited, Toronto, per Mr. Holmes Maddock, reference to proposal suggested by Mr. Berliner at page 74 of the proceedings and evidence. Also, agreeing with the evidence given by Mr. Gordon V. Thompson.

DECISIONS OF THE UNITED STATES COURTS AND CIVIL DIVISION
OF HAMBURG RELATING TO COPYRIGHTED MUSIC

Decisions marked "A", "B" and "C" hereunder following were considered in the course of the evidence given by Witnesses Nathan Burkan and J. C. Rosenthal on March 30th. See pages 232-238 and 247 of the Proceedings. Decision marked "D" was sent to the Committee on April 23rd. Submitted and ordered printed with the Proceedings.

A

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

M. WITMARK & SONS, a corporation, }
Plaintiff.

vs

L. BAMBERGER & Co., a corporation, }
Defendant.

In Equity
OPINION.

MESSRS. WALL, HAIGHT, CAREY & HARTPENCE, and SAMUEL M. HOLLANDER, Esq.,
Solicitors, for Plaintiff. THOS. G. HAIGHT, Esq., of counsel.

MESSRS. PITNEY, HARDIN & SKINNER, Solicitors for Defendant. ALFRED F.
SKINNER, Esq., of counsel.

LYNCH, District Judge.

The defendant conducts a gigantic department store in the City of Newark, New Jersey, and sells its wares at retail throughout the State of New Jersey, if not in adjacent states. Since February, 1922, it has conducted a radio department wherein radio equipment of all sorts is sold. It has also established and conducts a licensed radio broadcasting station known as Station WOR, from which vocal and instrumental concerts and other entertainment and information are broadcasted on a wave length of 405 meters. The plaintiff owns the musical composition entitled "Mother Machree" and, under the Copyright Act of 1909 possesses the exclusive right to perform that composition publicly for profit.

The plaintiff, alleging that the defendant performed, or caused to be performed, its composition "Mother Machree" by means of singing from the broadcasting station WOR and that this performance by the defendant was publicly for profit, prays that a preliminary injunction issue restraining the defendant from the further performance of its copyrighted song. The defendant denies that this broadcasting of the copyrighted "Mother Machree" was or is *for profit*, its contention being that because everything it broadcasts is broadcasted without charge or cost to radio listeners, there is no performance *publicly for profit* within the meaning of the Copyright Act.

It being extremely unlikely that any facts developed upon final hearing will alter the undisputed situation now presented and both parties desiring a speedy final determination of the issue, the court is disposed, at this time, to register its conclusions as to the law.

The question simmered down is: What is meant by the words "publicly for profit?" Fortunately, those words have been construed by the United States Supreme Court in the case of *Herbert v. Shanley Co.*, 242 U.S. 591, a case frequently referred to by counsel on both sides of this cause. The facts there were as follows: The Shanley Co. conducted a public restaurant in New

York City wherein was located a platform or small stage upon which orchestral selections were rendered and songs were sung by paid performers for the entertainment of persons visiting the restaurant. No admission fee was charged. The owner of a copyright song known as "Sweethearts," alleging that his property rights were being invaded because his song was being sung by Shanley's performers, sought injunctive relief in the United States Court for the Southern District of New York. This relief was denied, it being the view of the District Judge (and the Judges of the Circuit Court of Appeals concurred) that because no admission was charged at the door of the restaurant, there was no performing of the song "Sweethearts" *publicly for profit* within the meaning of the Copyright Act. The United States Supreme Court, however, took a different view. Justice Holmes, in speaking for the court of last resort, had this to say:

"If the rights under the copyright are infringed only by a performance where money is taken in at the door they are very imperfectly protected. Performances not different in kind from those of the defendants could be given that might compete with and even destroy the success of the monopoly that the law intends the plaintiffs to have. It is enough to say that there is no need to construe the statute so narrowly. The defendant's performances are not eleemosynary. They are part of a total for which the public pays, and the fact that the price of the whole is attributed to a particular item which those present are expected to order, is not important. It is true that the music is not the sole object, but neither is the food, which probably could be got cheaper elsewhere. The object is a repast in surroundings that to people having limited powers of conversation or disliking the rival noise give a luxurious pleasure not to be had from eating a silent meal. If music did not pay it would be given up. If it pays it pays out of the public's pocket. Whether it pays or not the purpose of employing it is profit and that is enough. Decree reversed."

It is strenuously argued in behalf of the defendant in the instant cause that it was the view of the court of last resort that the facts, as developed in the Shanley situation, showed that there was a *direct* charge to those who patronized the restaurant—a *direct* charge for and on account of music which was collected from persons dining there. So far as appears, there was only one "item" charged for, to wit: food. In fixing the charge for food the restaurant proprietor undoubtedly took into consideration many items in addition to the cost of the food and the preparation and service of it. There was "attributed to" the "item" food the musical entertainment and other attractions afforded the patrons. The dinner at no time had the subject of entertainment charge called to his attention except in the high price of the food which he was permitted to procure. This, in our opinion, was an *indirect* way of collecting the charge for musical entertainment from those who were there to pay. To constitute a direct charge, it seems to us, that there would have to be an admission fee charged at the entrance of the dining hall or a specific fee for entertainment would have to be charged the listener either while in or about to leave the premises.

There is another case which strikes us as being quite helpful. In the case of Harms et al. v. Cohen, 279 Fed. 276, District Judge Thompson held that the playing of copyrighted music by a pianist in a motion picture theatre was an infringement of the copyright and relief was accorded the owner thereof. In that case an admission charge was collected from all who entered the theatre for the purpose of viewing motion pictures. Incidental to the exhibition was the playing by a pianist of music which, to the pianist, seemed appropriate to the development of the play or events which were being portrayed on the screen.

No selection of music was made up by the proprietor of the theatre or consented to by him in any way. There was no fee for musical entertainment called to the attention of the patron of the theatre at any time.

The pianist being permitted to use his own judgment as to what musical selections to play, played the musical composition entitled "Tulip Time" from the "Ziegfeld Follies, 1919." It was held by Judge Thompson that the furnishing of music was an attraction which added to the enjoyment of persons viewing the motion pictures and that although the proprietor had nothing whatever to do with the selection of the musical compositions rendered, the fact that the pianist was paid by the proprietor to supply the music moved the court to hold that the proprietor was furnishing music *publicly for profit*. There being no *direct* charge on account of musical entertainment furnished, there was what we term an *indirect* charge or fee therefore.

If our construction of the opinion of the Supreme Court in the Shanley case, *supra*, be sound, that is to say, if there was found to be an *indirect* charge for the use of copyrighted musical compositions because of which the court held that the owner of the copyright was entitled to relief, the problem now presented for solution is not so difficult.

We have already stated that the Bamberger Co. makes no direct charge to those who avail themselves of the opportunity to listen to its daily broadcasting programs. The question then is: Is the broadcasting done *for an indirect* profit? In determining this we think it is proper to look to the reason for broadcasting at all. Why was it done? What was it done for? What was the object, or to use the term of Justice Holmes: What was the "purpose"? We know the purpose of the restaurant proprietor and we know the purpose of the proprietor of the moving picture theatre. What was the purpose of the defendant in expending thousands of dollars in establishing and operating this broadcasting station?

Adopting the language of Justice Holmes, the defendant is not an "eleemosynary institution." A department store is conducted for profit, which leads us to the very significant fact that the cost of the broadcasting was charged against the *general expenses of the business*. It was made a part of the business system.

Next we have the fact, already referred to, that the defendant sells radio receiving instruments and accessories. Whether a profit has resulted from such sales is not material in determining the object. It is within the realms of probability that many departments of a large store at times show losses rather than profits. Paraphrasing the comments of Justice Holmes "Whether it pays or not the purpose is profit and that is enough." While the defendant does not broadcast the sale prices of its wares, or refer specifically thereto, it does broadcast a slogan which appears in all of the defendant's printed advertisements. That slogan which is "L. Bamberger & Co., one of America's Great Stores, Newark, N.J.," is broadcasted at the beginning of every periodical programme and also at the conclusion thereof. A person listening to the programme of WOR will hear at the beginning the statement that L. Bamberger & Co. regard themselves as the proprietors of one of America's great stores.

If the development or enlargement of the business of the department store was completely out of the minds of the promoters of this broadcasting enterprise is it reasonable to believe that the slogan "L. Bamberger & Co., one of America's Great Stores, Newark, N.J.," would be announced to all listeners one, two, three, four, five or six times a day? If the defendant desired to broadcast for purely eleemosynary reasons, as is urged, is it not likely that it would have adopted some anonymous name or initial? Undoubtedly the proprietors in their individual capacities have done and do many things of a public spirited and charitable nature on account of which they are entitled to the highest commendation. But it does not appear and the court cannot believe, that those charitable acts are **all**

labelled or stamped "L. Bamberger & Co., One of America's Great Stores, Newark, N.J."

There is another point which, although striking us as immaterial, deserves some comment. The defendant argues that the plaintiff should not complain of the broadcasting of its song because of the great advertising service thereby accorded the copyrighted number. Our own opinion of the possibilities of advertising by radio leads us to the belief that the broadcasting of a newly copyrighted musical composition would greatly enhance the sales of the printed sheet. But the copyright owners and the music publishers themselves are perhaps the best judges of the method of popularizing musical selections. There may be various methods of bringing them to the attention of music lovers. It may be that one type of song is treated differently than a song of another type. But, be that as it may—the method, we think, is the privilege of the owner, he has the exclusive right to publish and vend, as well as to perform.

Considering all of the facts and circumstances it is the conclusion of the Court that the broadcasting of the defendant was publicly for profit within the meaning of the Copyright Act as that meaning has been construed by the United States Supreme Court.

A decree will be entered in favour of the plaintiff but restraint will be withheld pending a review of this opinion.

Copy, furnished by American Society of Composers, Authors and Publishers, 56 West 45th Street, New York City.
August 11, 1923.

B.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEROME H. REMICK & COMPANY,
Plaintiff

AGAINST

GENERAL ELECTRIC COMPANY,
Defendant

NATHAN BURKAN, Esq., Attorney for Plaintiff.

CHARLES NEAVE, Esq., and MERRELL E. CLARK, of Counsel for Defendant.
KNOX, D. J.

Upon the question, as to whether the broadcasting by radio, of a copyrighted musical composition, without the consent of its proprietor, constitutes an infringement of his rights, I am of opinion that under certain circumstances such may be the fact. In other words, I can conceive of conditions under which the unauthorized broadcasting of a copyrighted musical composition will be nothing else than its public performance for profit.

But in any such inquiry, I think it necessary to ascertain whose performance was broadcast. Was it that of the broadcaster, or was it that of another person who may have been authorized to perform the copyrighted composition publicly, and for profit? If the latter, I do not believe the broadcaster is to be held liable. By means of radio art he simply makes a given performance available to a greater number of persons who, but for his efforts, would not hear it. So far as practical results are concerned, the broadcaster of the authorized performance of a copyrighted musical selection does little more than the mechanic who rigs an amplifier or loud speaker in a large auditorium to the end that persons in remote sections of the hall may hear what transpires upon its stage or rostrum. Such broadcasting merely gives the authorized performer a larger audience and is not to be regarded as a separate and distinct performance of the copyrighted composition upon the part of the broadcaster.

When allowance is made for the shrieks, howls and sibilant noises attributable to static and interference, the possessor of a radio receiving set attuned to the station of the broadcaster of an authorized performance, hears only the selection as it is rendered by the performer. The performance is one and the same whether the "listener in" be at the elbow of the leader of the orchestra playing the selection, or at a distance of a thousand miles.

If a broadcaster procures an unauthorized performance of a copyrighted musical composition to be given, and for his own profit makes the same available to the public served by radio receiving sets attuned to his station, he is, in my judgment, to be regarded as an infringer.

It may also be that he becomes a contributory infringer in the event he broadcasts the unauthorized performance by another of a copyrighted musical composition. To this proposition, however, I do not now finally commit myself.

For the reasons stated, I shall deny defendant's motion to dismiss the complaint.

The Affidavits submitted upon plaintiff's application for an injunction Pendente Lite, are such as to throw considerable doubt upon the right to preliminary restraint.

The performance of the selection, "Somebody's Wrong" by the orchestra at the New Kenmore Hotel in Albany, New York, is claimed by defendant to have been given under an implied license from the plaintiff. It also appears that a representative of the complainant addressed a letter to the leader of the orchestra, giving him permission to broadcast any of plaintiff's copyrighted musical compositions. Such authority is said by plaintiff to have been revoked prior to the alleged infringement of the copyright upon "Somebody's Wrong," but, if it was, the fact may better be determined when all evidence tending to show the right of the hotel orchestra to perform the selection is before the court. Should it appear that the performance of the selection was authorized by plaintiff, it will be impossible to find infringement upon the part of the broadcaster.

Aside from the question of statutory construction presented by the bill of complaint, defendant makes the point that plaintiff's title to the copyright in question is not sufficiently alleged. It is not without merit, and I shall require plaintiff to so amend the complaint as to show unmistakably that it is now entitled to ask relief against the defendant for its alleged infringement of the copyright upon "Somebody's Wrong."

September 30, 1924.

C.

UNITED STATES CIRCUIT COURT OF APPEALS
SIXTH CIRCUIT

JEROME H. REMICK & COMPANY,	}	No. 4190
<i>Appellant,</i>		
VS.		APPEAL FROM THE UNITED STATES
THE AMERICAN AUTOMOBILE ACCESSORIES		DISTRICT COURT FOR THE SOUTHERN
COMPANY,	}	DISTRICT OF OHIO,
<i>Appellee.</i>		WESTERN DIVISION

Decided April 9, 1925

Before DENISON, MACK AND DONAHUE, *Circuit Judges*

MACK, *Circuit Judge*: The plaintiff brought bill in equity to enjoin defendant from reproducing by radio broadcasting a musical composition entitled "Dreamy Melody," the copyright of which is owned by plaintiff. The bill alleged that defendant manufactured and sold radio products and supplies for

pecuniary profit; that it maintained a radio broadcasting station in Cincinnati as a medium of advertising and publicity and as a means of bringing its radio products and supplies to the attention of the public and stimulating the sale thereof, and that the maintenance of the station was effective for those purposes; that the license from the United States Department of Commerce, Bureau of Navigation Radio Service to operate as a commercial station was issued upon application to operate for commercial purposes; that defendant announced its programme to the public by newspaper advertisements and bulletins, and that it started and ended its programs with the announcement, "Station WLW, Crosley Manufacturing Company, Cincinnati, Ohio." The bill further alleged that the defendant charged on its books the radio broadcasting service to its advertising and publicity account. It prayed for injunction and damages. Motion to dismiss the bill was sustained.

The question presented is whether, under the circumstances stated, the broadcasting of a copyrighted musical composition is an infringement of the statutory copyright. By the Act of March 4, 1909, Chapter 320, Section 1, 35 Stat. 1075, "Any person entitled thereto, upon compliance with the provisions of this Act, shall have exclusive right * * * to perform the copyrighted work publicly for profit if it be a musical composition, and for the purpose of public performance for profit."

While the fact that the radio was not developed at the time the Copyright Act was enacted may raise some question as to whether it properly comes within the purview of the statute, it is not by that fact alone excluded from the statute. In other words, the statute may be applied to new situations not anticipated by Congress, if, fairly construed, such situations come within its intent and meaning. Thus it has been held both in this country and England that a photograph was a copy or infringement of a copyrighted engraving under statutes passed before the photographic process had been developed. *Gambart v. Hald*, 14 C. B. N. O. 303; *Rossiter v. Hall*, 5 Blatchford, 362. While statutes should not be stretched to apply to new situations not fairly within their scope, they should not be so narrowly construed as to permit their evasion because of changing habits due to new inventions and discoveries.

Bills have been introduced in both House and Senate to permit broadcasting without infringing copyrights. The rights of composer, producer, performer and the public under this new method of reproduction are eminently matters for considered legislation; but until Congress shall have specifically determined the relative rights of the parties, we can but decide whether and to what extent statutes covering the subject-matter generally but enacted without anticipation of such radical changes in the method of reproduction are, fairly construed, applicable to the new situation.

A performance, in our judgment, is no less public because the listeners are unable to communicate with one another or are not assembled within an inclosure or gathered together in some open stadium or park or other public place. Nor can a performance, in our judgment, be deemed private because each listener may enjoy it alone in the privacy of his home. Radio broadcasting is intended to and in fact does reach a very much larger number of the public at the moment of the rendition than any other medium of performance. The artist is consciously addressing a great though unseen and widely scattered audience and is therefore participating in a public performance.

That under the Copyright Act a public performance may be for profit though no admission fee is exacted or no profit actually made, is settled by *Herbert v. Shanley*, 242 U.S. 591. It suffices, as there held, that the purpose of the performance be for profit and not eleemosynary; it is against a commercial as distinguished from a purely philanthropic public use of another's composition that the statute is directed. It is immaterial, in our judgment, whether that commercial use be such as to secure direct payment for the performance by each

listener or indirect payment as by a hat checking charge when no admission fee is required, or a general commercial advantage as by advertising one's name in the expectation and hope of making profits through the sale of one's products, be they radio or other goods.

In *Pastime Amusement Co. v. M. Witmark & Sons* (C. C. A. 4), decided November 13, 1924, affirming 289 Fed. 470; *Jerome H. Remick & Co. v. General Electric Co.*, S. D. N. Y., decided September 30, 1924; *M. Witmark & Sons v. L. Bamberger & Co.*, 291 Fed. 776, the courts have reached this same result. Cf. *Kalem v. Harper*, 222 U. S. 55.

There is nothing in *White-Smith v. Appollo*, 209 U. S. 1, that effects our conclusion. There the question was whether a perforated music roll was a publishing or copying of music that had been copyrighted. The court expressly stated that the question whether the manufacturers of such perforated music rolls, when sold for use in public performance, might be held as contributory infringers, was not involved. The question as to what constituted a public performance did not arise.

Reversed and remanded.

(Copy)

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
56 WEST-45TH STREET, NEW YORK CITY

APRIL 23rd, 1925.

V. CLOUTIER, Esq.,
Clerk, Committee on Copyright,
House of Commons,
Ottawa, Canada.

Dear Mr. CLOUTIER,—I am taking the liberty of sending you herewith an English translation of a decision rendered in Germany, upholding the right of a copyright owner of music to restrict broadcasting stations from giving unauthorized performances.

This decision may be useful to your Committee as it contradicts the statement made by a witness, to the effect that broadcasting was permitted in all other countries and that Canada should enact similar legislation.

I trust that you will understand that my purpose in sending this opinion is to furnish your Committee with information regarding the facts as they exist, and if you wish additional copies for other members of the Committee, I will be very happy to send them to you.

Very truly yours,

J. C. ROSENTHAL,
General Manager.

D

Translation.

LANDGERICHT IN HAMBURG

Civil Division 3

PUBLISHED DECEMBER 30, 1924,
CLERK OF COURT, IHLOFF,
CHIEF JUDICIAL SECRETARY.

In the matter of

Director Hugo Bryk, as general representative of (a) the Society of Authors, Composers and Music Publishers in Vienna, a registered limited liability association; (b) of the Society for the Exploita-

tion of Musical Performing Rights (Gema) in Berlin, a limited liability association; both associated in the league for the protection of musical performing rights for Germany, in Berlin, S.W. 7, Dorotheenstrasse 32, represented by Attorneys Prof. Dr. A. Wasserman, Dr. Fisher, Dr. Bussmann, petitioner.

Against

The Nordish Radio Stock Corporation in Hamburg, represented by its Board of Directors, in Hamburg, Gr. Backerstrasse 11-15, respondent, represented by Attorneys, Drs. Peppler, Darboven, Soltau, Hagedorn and Jansen.

The Landgericht in Hamburg, Civil Division 3, through Chief Justices Dr. Framhein and Justice Dr. Rausch and Dr. Dehmelt, decrees as follows:

The respondent is by temporary order enjoined (under penalty of a fine to be determined in each case of violation) from broadcasting musical works of the composers and publishers mentioned in the list of composers, publishers and authors, being members of the Society of Authors, Composers and Music Publishers in Vienna and of the Society for the exploitation of Musical Performing Rights in Berlin (Gema) and in the repertoire of the American Society of Composers, Authors and Publishers.

The costs of this proceeding are to be paid by the respondent.

FACTS

The petitioner is the general representative of the Society of Authors, Composers and Music Publishers in Vienna, a registered limited liability association, and of the Society for the exploitation of Musical Performing Rights (Gema) in Berlin, a limited liability association, which two societies have associated themselves in the league for the protection of music performing rights for Germany in Berlin. (See Schedule 2.)

To these two societies and the league the composers mentioned in the lists of composers submitted to the court have assigned the protection of their performing rights. Accordingly the league makes contracts with all producers of commercial musical performances for the granting of the right to perform the compositions of the composers represented by the league. For the grant of such right the producer is to pay in fixed intervals stipulated fees which thereupon are divided between the composers and the heirs of composers according to certain ratios in the manner provided by the by-laws of the league and its two constituent societies.

Petitioner alleges that the respondent has broadcast, without having acquired the performing right thereof, the 35 musical compositions mentioned in the letter of the plaintiff's attorney, dated September 25, 1924 (Schedule A); that this fact was established by investigations made by the petitioner. It is to be assumed that the respondent has broadcast, without having acquired the performing right thereof, other copyrighted musical works. The petitioner demanded in place of the unpaid royalty a provissional payment of ten gold marks for every composition broadcast, by the respondent without license. That the respondent was only willing to pay a much smaller sum, and at the same time denied having broadcast seven of the musical compositions alleged and that it claimed as to five other pieces that it had received the same from the publishing firm Benjamin in Hamburg.

The petitioner, relying upon the facts above outlined and upon additional statements of its investigator, Max Freund, moved in the Amstgericht Hamburg for a temporary decree as follows:

That the respondent be restrained, under penalty of 1,000 goldmarks for each violation, from broadcasting through its radio system the works of composers the performing rights in which are represented in Berlin.

The Amstgericht Hamburg ordered a hearing on this motion and thereupon by order of November 10, 1923 (page 23 of the Amstgericht record) referred the controversy for the Landgericht Hamburg.

The respondent moved at the hearing before the Landgericht Hamburg to dismiss the motion for a temporary decree, with costs.

The proceedings were based by the representatives of the parties on their respective papers. The petitioner based his motion for temporary relief on its written pleas of December 22, 1924.

GROUND OF DECISION

The court holds that the petitioner, under the power of attorney submitted to the Court, which is subscribed by both Societies, is authorized to act and maintain his application on behalf of the League and of the Two societies constituting it.

The said two societies represent the copyrights of the composers, authors and publishers with whom they have concluded contracts to that effect. The respondent cannot claim as a defense that it is unable to decide in all cases whether any particular works are under the protection of certain particular societies or leagues. The respondent may perform only such works as to which it has acquired the performing right by contract; else it becomes liable for damages and is punishable under sections 11, 37, 38 of the Copyright Law of June 19, 1901.

The respondent has not denied that the compositions of the composers, Solz, Mascagn, Eilenberg and Siede (marked red in the schedules) are included in the works the performing rights in which are controlled by the petitioning League as League property. It has been satisfactorily established by the affidavit of the investigator Max Freund (Schedule C of the paper of December 22, 1924) that the respondent has publicly performed the said compositions on the 2nd and 5th days of December, 1924. It is also satisfactorily established by the same affidavit that the respondent has publicly performed on November 2, 1924, the works marked blue in the newspaper "Norag" of October 31, 1924; the composers of said compositions are, as shown by Freund's affidavit, members of an American Society which has transferred its rights to the petitioner. Lastly, the respondent has on December 3, 1924, performed by radio, as was heard by Freund, the composition, "Lottchen, Ich fahr mit dir nach Norderney", (Lotta, I Go With You To Norderney) by Stolz. It has performed all of said compositions publicly, without having received the permission of the League. That the broadcasting of a musical work constitutes a public performance, is considered by the Court to be free from doubt.

In view of all the facts there is danger that the acts will be repeated; especially in view of the declaration of the respondent, above mentioned, that it is unable to determine when particular works are under the protection of particular societies or leagues. The granting of the motion for a temporary decree seems proper under No. 940, Code of Civil Procedure. Hence such a decree should be granted in the form of the motion of the petitioner.

(Signed) FRAMHEIN
RAUSCH
DEHMELT.

The correctness of the copy is certified by

The Clerk of the
Landgericht.
(Signature)

L. S.

INDEX

INDEX TO EVIDENCE OF THE WITNESSES.

INDEX, GENERAL.

INDEX TO EVIDENCE OF THE WITNESSES

APPLETON, F. F., Publisher:—The Musson Book Company—Printing of "Jimmy Gold-coast," "Smoking Flax," "Zane Grey," "Mysterious Rider," "Thundering Herd," and other publications, 18-20—Licensing clauses and American authors—Copyright protection and the publishing industry, 20-23.

Communication.—Mr. Appleton writes desiring to qualify his evidence in respect to licensing clause as applied to books, 102.

Recalled.—Certain statements contained in previous evidence, reviewed—Printing of books in Canada is commercially possible—Viewing the question of copyright from two standpoints respecting licensing clauses—Suggests a provision in the Act that no compulsory license be granted for an edition of less than 2,000 copies—The fourteen days provision in the Act—Copy of the publisher's agreement—Ideals recognized in Bill 2., 191-193—The American publisher, a competitor—The ideal agreement—The publisher is frequently the owner of the copyright—Registration not necessary but is advisable, 193-194.

BECK, EDWARD, Member of Canadian Pulp and Paper Association:—Concerned in producing the kind of paper required for books, magazines, etc.—Capital invested, equipment and workmen—Effects of licensing clauses on production of paper—Describes kind of paper produced and explains how the tariff works out in respect of printing paper—Does not want to take away from authors what rightfully belongs to them—The manufacturing clause in the old Bill, 37-41.

BERLINER, EDGAR M., President, Victor Talking Machine Company of Canada Limited:—Interested in Bill 2 regarding musical works and mechanical reproduction—Manufacturers of records in Canada—Submits memorandum comprising several proposed amendments to proposed legislation; also amendments to certain provisions in the Act, 71-77—Effect of radio broadcasting on sale of records, 77-79.

BURKAN, NATHAN, Counsel, American Society of Composers, Authors and Publishers:—Have had 25 years' experience with copyright law in United States—A Canadian citizen is entitled to the same protection with respect to his work as an American citizen by virtue of a Presidential proclamation dated December 27, 1923—The printing clause or what is called the manufacturing clause applied only to books and periodicals in the English language—Cites the case of Lieutenant Gitz Rice, a Canadian citizen regarding a song which he wrote, 215-217—Domicile—Is of opinion that law of United States protects the Canadian authors as well as the American authors in the broadcasting of compositions by radio—Cites cases—218-220—Under United States law a performance given for charitable, religious or educational purposes is exempt from copyright control—Certain decision appealed against—Broadcasting stations operating as commercial institutions must pay royalty; 85 out of 137 of such are operating to-day under license from the Society—Case of The General Electric referred to—Decision of Hon. Judge Knox in respect of copyrighted musical compositions—Submits three decisions for the record—220-223—Nationality of author not considered in the arrangement of a programme for broadcasting—Five companies through ownership of radio patents control the radio industry in America, 223-226—Cites Mr. Sarnoff's testimony respecting super-stations—Royalties, 226-227—Discusses Bill to enable United States to adhere to Berne Convention—Companies not using copyrighted compositions, 228-230.

BURPEE, LAWRENCE J., National President, Canadian Authors' Association:—Mainly concerned in proposal to repeal licensing clauses of the Copyright Act—Prefers to consider the matter as one of principle—Interests other than authors' which benefit—Certain authors' works to which the licensing clauses do not apply—Paramount object of a copyright law—Do publishers and printers in Canada greatly benefit by the licensing clauses?—Effect of the Amending Act of 1923—Resolutions adopted by various societies in support of the proposed amendments, read into the evidence, 1-9.

CARTIER, J. N., Representing "La Presse" Broadcasting Station:—Asks for repeal of paragraph (q) clause 4 of Bill 2, and gives reason therefor, 124-126—What radio is accomplishing in educating Canadians, 126-127—Receiving sets in Province of Quebec—Purpose of broadcasting in the case of "La Presse"—Objects to interpretation of word "performance" as defined in Bill 2—"La Presse" operates its station at a loss—Impossible for a newspaper to trace a profit—Type of letter received asking that certain songs be broadcast—Average proportion of Canadian and foreign works on a programme, 127-131—Royalties, 132-134.

COMBS, ROBERT H., Representing Canadian Radio Trades Association:—Refers to Mr. Chevrier's proposed amendment *re* paragraph (q) of section 2 of the Act, 79-80—Reads memorandum *re* broadcasting stations and radio protection should present copyright legislation be amended—Act of 1921 in force too short a time to warrant changes—Musical works and collection of royalties—Musical works and authors—Broadcasting of amateur programmes of music—Broadcasting stations cannot be operated without music, 79-83—Suggests that clause be inserted *re* limitation of copyright control, 84—American and Canadian broadcasting—What constitutes broadcasting stations—Royalty on songs, 85-93.

CONSTANTINEAU, HON. A., Judge and Author:—Reason why he printed his book in United States—American Radio Corporation—Does not object to royalties and payment thereof to author on works that are broadcasted, 138-141.

de MONTIGNY, LOUVIGNY, Author, Councillor of Canadian Authors' Association:—Reads statement implementing data in respect of previous evidence *re* licensing clauses, 67-69—Licensing clauses prevent a Canadian author from importing into Canada his own edition for commercial purposes, if printed outside of Canada—The licensing system creates a monopoly for the Canadian printer, 70.

Recalled.—*Re* radio copyright issue, reads statement, 141-149—Suggests an amendment to section 27 (3) of the Act of 1921 to permit an author to import his book into Canada for which a license has been granted in case clause 5 of Bill 2 is rejected, 150.—Drafting of present Bill—Royalties, how collected—Part taken in copyright legislation, 151-159—Radio clauses—Copyrighting in United States, 160-164.

GIBBON, JOHN MURRAY, Ex-President, Canadian Authors' Association:—Opposed to section 13 of the Act, giving reasons therefor—How Canadian authors are effected—Extent of benefit to printing in 1924 by the licensing clauses—Works published in Canada—Books imported into Canada—Citizenship within the meaning of the Act, 9-17.

GUTHRIE, NORMAN G., Counsel, Canadian National Rys., (Broadcasting Stations).—Broadcasting from C.N.R. Stations, a matter of public interest—Urgent requests frequently received to broadcast Canadian fiction, agricultural reports, and musical compositions—Refers to interpretation of the word "performance" in the Act—no objection to state of the law of to-day—Some technical objections pointed out—Voices his objections to broadcasting clauses in Bill 2, 93-96—Operating the broadcasting stations without any direct profit—What common law decides—Rights granted under statutory law—Altering present law so as to grant further rights might interfere with rights now exercised by C.N.R.—Suggests a remedy, 96-98—Illustrates benefit accorded to song writers—Points out what would not be in the public interest, 98-99.

HAHN, JAMES E., Representing the De Forest Radio Corporation:—Manufacturing radio equipment and accessories—Now erecting a broadcasting station—Who is going to pay for the broadcasting?—Finally, as legislation now stands, the Corporation is liable to prosecution—Requires protection for the new industry, 100-101.

HARRISON, W. F., Secretary and Manager, Canadian National Newspaper and Periodical Association:—Membership—Speaking primarily for the magazine, the serial end of it—Strongly opposed to repealing the licensing clauses—Reads letter of Canadian Weekly Newspapers Association—Licensing clauses give partial protection to Canadian publishers and authors—Situation of United States publisher before and after the Act was passed—Knows of no cases where any author has suffered any injustice by virtue of the serial and the book licensing clauses, 26-29—Circulation of Canadian magazines—Licensing clauses forced the United States publishers to relinquish material which was previously withheld from Canada, 29-31.

HAYDON, J. A. P., President, Ontario and Quebec Conference, Typographical Union:—Employees engaged in the printing industry—Various interests concerned in 1921, in having present licensing clauses inserted in the Copyright Act—Importation of plates for printing—Desire that licensing clauses remain in the Act, 46-47—Suggests amendments, 47-49—How authors are protected—Serials—Have the licensing clauses been detrimental to any one Canadian author?—Submits that the Act should remain in effect at least five years before any change is made, 50-53.

JAMIESON, HENRY T., Chairman, Canadian Performing Right Society:—Certain interests and considerations deserving of attention—Purpose of the Society—Vitality interested in the Copyright Act of Canada—Reads cable received from London *re* violation of Berne Convention—Broadcasting rights reserved to author—In favour of the principles underlying the proposed amending legislation *re* rights of copyright owners, 135-137.

KELLEY, GEORGE M., Counsel, Publishers' Section, Toronto Board of Trade:—Publishers' Section comprises practically all publishers of books in the Dominion—Acting solely for the publishers—Distinction between the publisher and the printer, pointed out—The publisher is a necessary functionary to the author—Reads resolution of the Publishers' Section passed in March, 1925, 53-56—Suggests an amendment to section 27 of the Act—Publishers' objection to licensing clause 13 as it affects books—The author, how protected—The American law, 56-58—Question of royalties considered, 58-59—Average Canadian author forced to get a double market—The American authors' advantage, 60-63—Financial risks borne by the publisher—The printers' contention, 63-64—A law creating certain rights and privileges concerns the public generally—Effects of the licensing clauses—The art of depicting local colour makes the book a good seller, 64-65—Importation of copies of books and the altering of section 27 of the Act, 66.

KENNEDY, HOWARD ANGUS, Member, Montreal Branch, Canadian Authors' Association:—Exempt from licensing clauses owing to birth in the Old Country—How licensing clauses infringe not merely upon the financial rights of the authors, but transgress what he regards as the elementary A.B.C. of morals—Montreal Branch unanimously urge upon the Committee to repeal the licensing clauses, as they are absolutely immoral—Not intimately connected with serial publications—Works which witness has published, 240-242.

LEACOCK, PROFESSOR STEPHEN B., Author:—Is English born—Not within legislation of Canada as an author—The principal question at issue, how regarded—Does not believe that a Canadian author should be compelled as a condition of his copyright to have his work printed in Canada—Copyright created to stimulate authorship—Why printing of certain works is done in United States—Compares present situation of authors and printers in Canada, 23-25.

MACBETH, MRS. MADGE, President, Ottawa Section of Canadian Authors' Association:—Vitality interested in proposed legislation—Licensing clauses are harmful to authors' interests—Not opposed to the publishing and printing interests—Situation of the writer *re* finances—Royalties—Relates experience as author of "Kleath" and "Law of the Yukon"—Principle of licensing clauses is wrong, 182-185—Economic right of the author in the works produced—Serial stories and magazines—Registering a work under the Act, 186-190—Reprints, 190.

McKENZIE, J. VERNON, Editor and Representative of MacLean Publishing Company:—Practical value of the licensing clauses—The three groups which have profited under such clauses—Refers to short stories by Kipling—How licensing clauses are benefiting Canadian magazines—Canadian writers and markets for their works, 31-34—Publications in United States—Martha Ostenso's "Wild Geese"—How the interests of Canadian authors and publishers are bound together—The Canadian situation and magazine circulation, 34-36.

ROBERTSON, E. BLAKE, Representing Makers of Phonograph Records, the Ryerson Press and Radio Broadcasting Stations excepting the C.N.R.:—States position of industrial interests as not being opposed to necessary changes in the Copyright Act whereby infringement will be prevented, 106—Refers to Section 47 repealing certain copyright enactments—Sections of the Imperial Act considered—Agrees to certain clauses in Bill 2, 107-110—Proviso to section 11 (2) considered, 110-111—Compulsory printing provisions referred to—Works which secured copyright in Canada—The Berne Convention, 111-114—Cost of printing, 115-117—Copyright situation in United States—Refers to statements made by witnesses in the evidence given before the Committee, 117-121—Adherents to the Berne Convention—Interpretation of words "Canadian citizen" for purposes of the Act, 122-124.

Recalled.—Statements made by certain witnesses in evidence given in respect to broadcasting as a public performance for private gain, considered—Attempts made by authors to obtain better broadcasting control—Legislation situation on copyright in certain other countries—Stations in United States in respect to payment of fees, 197-199—Proposal favouring a system of fees collection—Suggests certain amendments regarding radio, 200-202.

ROSE, DAN A., Member representing the Canadian Copyright Association:—The purpose of the Association—Application made to publish "Boston Cook Book" under the Act of 1921—Boston publisher prints book in Toronto—Licensing clauses considered as a protection to printers and publishers—Ralph Connor's last novel—Printing situation in Toronto at present time—The Thomas Nelson series, 41-44.

ROSENTHAL, JULIUS C., General Manager, American Society of Composers, Authors and Publishers:—Membership of Society—Legal standing of Mr. Burkan respecting copyright law—Radio broadcasting in United States recognize that there is some legal restriction upon the use of copyrighted material—Broadcasting stations which have taken out licenses from the Society to present date—Fees—Privileges granted by licenses—Music publishers in United States—No royalty is paid upon a receiving set—Average cost of installing a broadcasting station, 230-233—Mr. Comb's testimony referred to in respect to broadcasting—Radio broadcasters not entitled to take the property of an author any more than to take the tubes which they must buy—Case of a broadcasting station which infringed—Statement of "La Presse" representative *re* broadcasting for no profit, referred to—Reads paragraph in Form for License enabling stations operated by an educational, religious or charitable institution to use copyrighted compositions without having to pay royalties, 233-235—Manufacturers of records which give cash prizes to recoup certain losses—Case of programme picked up at Sayville by London, re-broadcasted to New York and from latter place transmitted to Chicago, 225-236—Effect of over-broadcasting of a song; concrete example given, 236.

SURVEYER, HON. JUSTICE EDOUARD FABRE, President, Montreal Branch (English Section), Canadian Authors' Association:—Is of opinion that the copyright law as it now stands is detrimental to authors—A continuation of the licensing clauses in the statutes harm literary productions in Canada—Sensitiveness of authors who are musicians and artists regarding a square deal and danger of losing such asset—How authors are harmed financially by the licensing clauses—Would advise a compromise and let the licensing clauses apply to magazines only—Not prepared to answer questions relating to radio—Printers and typesetters—Licensing clauses fundamentally and morally wrong—The dime novel type of book productions published and illustrated sometimes not suitable to the author; gives example—Licensing clauses from the standpoint of publishers and authors, discussed—Why authors do not sometimes wish their earliest works to be republished—Canadian authors' works sold in United States—The Minister's control of publication under section 13 of the Act, considered, 204-212—Discusses the reported discrimination in favour of British-born authors residing in Canada as against Canadian-born authors with respect to the licensing clauses, 213-215.

SUTHERLAND, WALLACE A., Secretary and Manager, Toronto Typothetae:—An organization of employing printers—Strongly opposed to any change in the licensing clauses—Telegram from the Ryerson Press—The strike of 1921 and its effects, 45-46.

THOMPSON, ALFRED E., Canadian Representative, International Typographical Union of Canada:—Printing industry interested in the licensing clauses—Of opinion that amendments are not necessary at present time—Believes that cancelling of licensing clauses will simply mean the diversion of more printing to the United States, 66-67.

THOMPSON, GORDON V., General Manager, Leo Feist Limited:—Reads statement *re* part taken by witness in copyright legislation and his interest in the production of music—Protection of Canadian authors in United States copyrighting—Refers to Mr. Berliner's evidence *re* phonograph royalties—Control of words in songs—Only one royalty should be collected—Radio situation regarding music productions—The flow of United States broadcasting into Canada—Suggests a way whereby the author or composer could secure royalties, 167-176—Exclusive publishers of music—Understands that interpretation given to the word "performance" applies to radio broadcasting—Where difficulties may lie in the collection of royalties—Frequent broadcasting of same song may affect its value, 177-182.

GENERAL INDEX

AMERICAN FOLKLORE SOCIETY, CANADIAN BRANCH OF:—Communication from officers and members of, read by President Burpee re proposed amendments to Copyright Act, 8-9.

AMERICAN RADIO CORPORATION:—*See* Radio Corporation of America.

AMERICAN TELEPHONE AND TELEGRAPH CO.:—*See* Radio Corporation of America.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS:—*See* evidence of Mr. Burkan, 215-230; Mr. Rosenthal, 230-236. Form of license, issued by, 234-235. Telegram re radio performances, 142.

ASSOCIATIONS, LITERARY:—Resolution re proposed amendments to Copyright Act, 8-9.

AUTHORS, AND AUTHORS' ASSOCIATION, CANADIAN:—*See* evidence of Mr. Burpee, 1-9; Mr. Gibbon, 9-18; Prof. Leacock, 23-26; Mr. de Montigny, 67-70, 141-164; Hon. A. Constantineau, 138-141; Madge Macbeth, 182-190; Hon. Justice Surveyer, 204-215; Mr. Kennedy, 240-242; also evidence of Mr. Kelley, re authors' interests and protection, 56-7, 60; Mr. Robertson, 109-110, 112-116; and Mr. Burkan, re protection of Canadian authors in United States, 216-218.

AUTHORS, VARIOUS:—References to, in evidence given.—Professor Leacock, 3, 12, 16-17, 60, 213; Mr. Packard, 11, 15; Mr. Saunders, 13, Robert Stead, 13; Mrs. Montgomery, 14, 16; Ralph Connor, 14, 16, 43, 209; Mr. Stringer, 14; Sir Gilbert Parker, 14, 188, 214; Mr. Beek, 15; Mr. Barrington, 15; Mr. Abbott, 16; Mr. Gibbon, 16-17, 213; Zane Grey, 14, 17, 19-21; Rudyard Kipling, 31; R. J. C. Stead, 33; Martha Ostenso, 34, 207; Hall Caine, 42; Nellie McClung, 63; Mr. Curwood, 65; Mr. Morin, 69; Mr. Hémon, 69; Mr. Irvine, Mr. Burbridge, Mr. Charlton, and Mr. McDougall, 112; Mr. Méré, 154; Mr. de Montigny, 114-116; Mr. Hopmansthal, 160; H. G. Wells, 162; Robert Service, 184; Madge Macbeth, 182, 184; Sir Daniel Wilson, 186; Mr. Bennett and Mr. Galsworthy, 188; Miss Sime and Marjorie Pickthall, 213; Mr. Roberts, 214.

AUTHORS OF SONG AND MUSIC:—References to, in evidence given.—Irving Berlin, Charles Balmer, Will Bellman and Wendell Hall, 81; Rouget de Lisle, 82-83; Caruso, 92; Bach, Schumann, Wagner, Mozart, Gounod, Bizet and Beethoven, 156; Lieut. Gitz Rice, 168, 170, 217; Geoffrey O'Hara, Morris Manley, McNutt and Kelly, and Captain Plunkett, 168; Paul Whiteman, 235.

AUTHORS' SONGS AND MUSIC:—References to, in evidence given.—Two Little Girls in Blue, After the Ball, 81; It Aint Gonna Rain No Mo', 81, 92, 98; La Marseillaise, 82-83; Rule Britannia, God Save the King, Follow the Swallow, 82; Smile o' Molly Maloney, 98; Moonlight and Roses, Shadows Across My Heart, 129; Dear Old Pal of Mine, 168, 178, 217; Keep Your Head Down, Fritzie Boy, K-K-K-Katy, Good Luck to the Boys of the Allies, We'll Never Let the Old Flag Fall, Come Back Old Pal, 168; In Flanders' Fields, 171; Doo-Wacka-Doo, 180; I Love You, 229; All Alone, I Wonder What's Become of Sally, 235; Rose Marie, 236.

AUTHORS' WORKS, FICTION AND OTHER, EXCEPT SONGS AND MUSIC:—References to, in evidence given.—Boston Cook Book, 11, 42-43, 52; Jimmy Goldcoast, Smoking Flax, 13, 19; Divine Lady, Lady Hamilton and Lord Nelson, 15; Leroux, 16; To the Last Man, 19, Thundering Head, 19, 20; Mysterious Rider, Wanderer of the Wasteland, 20; Wild Geese, 34, 207; Be Good, 44; Maria Chapdelaine, 65, 69; Paon d'Email, 69; Farmers in Politics, Digest of Criminal Laws in Canada, Speeches and Addresses, Rural Life in Canada, 112; De Facto Doctrine, 138, 209; Les Trois Masques, 144; Kleath, 184; Law of the Yukon, 185; The Story of Canada, New Canada and the New Canadians, Old Highland Days, The New World Fairy Book, The Book of the West, 242.

BERNE CONVENTION:—References to, in the evidence given.—3, 6, 12, 22, 42-3, 55, 73, 197, 109, 111-4, 121-2, 136-7, 145, 149, 151, 154-5, 161, 164, 173, 212, 228; in Resolution of Canadian Authors' Association, 7; in Resolution of Publishers' Section, Toronto Board of Trade, 55; in Memorandum of Mr. O'Halloran, 250; in Statement of Mr. Jamieson, 252.

BILL No. 2, AN ACT TO AMEND THE COPYRIGHT ACT. 1921:—

Amendments to, suggested in the evidence given, 71-76, 79, 97.

Authors' Associations and other Organizations, approving proposed amendments, 6-9.
Bill, an ideal one, from the author's standpoint, 193.

Drafting of the Bill, 150-1.

Certain clauses of Bill, objected to, 108-9.

Principles of Bill underlying proposed amendments, approved, 137. *See also memorandum re a certain amendment to Bill, 249-250.*

BROADCASTING:—*See* Radio Broadcasting and Broadcasting Stations.

BRUNSWICK-BALKE-COLLENDER CO. (Radio):—*See* evidence of Mr. Rosenthal, 231, 234-5.

CANADIAN CITIZENSHIP:—References to, in the evidence given, *re* certain authors' rights to copyright, 3, 12, 16-7, 23—Interpretations of, considered, 122-4—British-born authors residing in Canada *re* licensing clauses, 213-5; *see also* statement of Mr. O'Halloran, 215.

CANADIAN COPYRIGHT ASSOCIATION:—*See* evidence of Mr. Rose, *re* publication of works in Canada, 41-5.

CANADIAN MUSIC PUBLISHERS & DEALERS ASSOCIATION:—Memorandum *re* copyright legislation, authors and composers of music, music industry, and radio broadcasting of music, 245-9.

CANADIAN NATIONAL RAILWAYS, BROADCASTING STATIONS OF:—*See* evidence of Mr. Guthrie, 93-101; also references thereto in the evidence of Mr. Combs, 82, 87; Mr. Robertson, 106; Mr. Burkan, 224-6.

CANADIAN NATIONAL NEWSPAPERS & PERIODICAL ASSOCIATION:—*See* evidence of Mr. Harrison, 26-31.

CANADIAN PULP AND PAPER ASSOCIATION:—*See* evidence of Mr. Beck, *re* paper produced for books, magazines, etc., 37-41.

CANADIAN RADIO TRADES ASSOCIATION:—*See* evidence of Mr. Combs, 79-93; *see also* references thereto, in the evidence of Mr. de Montigny, 142-3; Mr. Rosenthal, 233.

CANADIAN WEEKLY NEWSPAPERS ASSOCIATION:—*See* evidence of Mr. Harrison, 26-31.

COMMISSIONER OF PATENTS AND COPYRIGHT:—*See* O'Halloran, George F.

COMMUNICATIONS READ IN THE EVIDENCE GIVEN:—Authors' Associations and other Organizations, Mr. Burpee, 6-9; Canadian Weekly Newspapers Association, Mr. Harrison, 26-7; Ryerson Press, Mr. Sutherland, 45; Publishers' Section, Toronto Board of Trade, Mr. Kelley, 55-6; Performing Right Society of London, England, Mr. Jamieson, 136; American Society of Composers, Authors and Publishers of New York, Mr. de Montigny, 142, 146; Music Publishers Protective Association of New York, Mr. de Montigny, 142; Performing Right Society of London, Mr. de Montigny, 145; Russell, Lang & Co. Limited of Winnipeg, Mr. Irvine, 162.

COMMUNICATIONS RECEIVED:—Associated Radio of Manitoba, J. H. Curle, *re* royalties on broadcasting, 71; Telegram and letter from F. F. Appleton, *re* book licensing provisions and evidence given in relation thereto, 101-2; Letters from Mr. W. F. Maclean, M.P. and Mr. R. L. Wilby, *re* rights of authors, 104-5; Kelowna Radio Association, Mr. W. A. Scholl, *re* royalties on the broadcasting of copyrighted music, 105; Telegram from Mr. Appleton *re* desire to avoid the necessity of re-appearing before the Committee, 137; Canadian Manufacturers' Association, Mr. H. Macdonald, *re* principle of licensing clauses to be adhered to, 164-5; Letter from Viscount de Fronsac, Halifax, *re* his approval of clauses in Bill 2 providing for protection to authors, 165; Letters from Canadian Women's Press Club of London and Winnipeg, protesting against the licensing clauses, 166; Cablegram from Music Publishers' Association of Great Britain, approving clauses referring to broadcasting rights in Bill 2, 166; Letter from The Canadian Booksellers' & Stationers' Association, Toronto, *re* copyright legislation, 195; Statement of H. T. Jamieson, *re* certain evidence, 203, 252-3; Letter from Whaley, Royce & Co., Limited, Toronto, *re* proposal suggested by Mr. Berliner, 203-254; Music Publishers' Association, Limited, of London, England, *re* approval of certain provisions in Bill 2, 204; Toronto Writers' Club, Allan M. Irwin, 238; Letters

re Mr. Robertson and the Ryerson Press, from Mr. T. G. Marquis, and Dr. Lorne Pierce, 239, and from Samuel W. Fallis, 255; Telegrams from various branches of Canadian Authors' Association, urging the repeal of licensing clauses, 251; Memorandum of Mr. George F. O'Halloran, Commissioner of Patents, *re* certain proposed amendment to the Copyright Act, 1921, 240-250. *See* also Decisions of United States Courts marked A, B, and C, 265-271; also Decision given at Hamburg, Germany, marked D, 271-3.

COPYRIGHT ACT, BRITISH:—References to, in evidence given.—56, 58, 75-7, 106-113, 120, 135, 144, 148, 152, 155, 161, 168, 218.

COPYRIGHT ACT, CANADIAN:—Infringements of, 3, 80, 108, 136-7, 144, 148-9, 157, 228.—Amendments of, requested, 6-9—Amendments of, suggested, 22-3, 47, 56, 66, 73-5, 84, 101, 109, 110, 150, 172. Fundamental idea of, and how understood, 3, 24-5—How the Act came into force, 113—Interpretation of paragraph (q) in Section 2, *re* "performance" considered, 79, 91, 94-7, 101, 125, 127-9, 131-2, 135-6, 142-3, 147-9, 200-1.

COPYRIGHT ACT, UNITED STATES:—References to, in the evidence given.—56-8, 61, 114, 136, 143-4, 148, 157, 161, 168, 174, 198-9, 208, 212, 217-8, 222-3, 231—Bill HR 7357, to regulate radio communication, 224.

COPYRIGHTED WORKS:—Number of, which secured copyright under the Canadian Copyright Act, 1906-1923, inclusive, 112.

COURT CASES AND DECISIONS RELATIVE TO COPYRIGHT:—References to, in the evidence given.—In Canadian Courts, 154-5—In United States Courts, 88-9, 91, 143, 219-220, 222, 233—In England, 136. *See* also 265-273.

CRIMINAL CODE:—Author's protection against infringement of copyright in, 228.

DE FOREST RADIO CORPORATION:—*See* evidence of James E. Hahn, 100-101.

DROIT D'AUTEUR, LE (Authors' Periodical):—references to, in the evidence given.—142, 145, 160.

FICTION:—*See* evidence of Madge Macbeth, 182-190.

GENERAL ELECTRIC CO.:—*See* Radio Corporation of America.

HISTORICAL ASSOCIATION, CANADIAN:—President's communication to Mr. Burpee, *re* repeal of licensing clauses, 8.

LA PRESSE (Broadcasting Station):—*See* evidence of J. N. Cartier, 124-135—References to, by other Witnesses,—87, 144, 147-8, 158, 224-6, 234.

LEO FEIST LIMITED (Music Publishers):—*See* evidence of Gordon V. Thompson, 167-182.

LICENSING CLAUSES (Sections 13, 14, 15, Copyright Act, 1921):—References to, in the evidence given.—Repeal of clauses, desired, Mr. Burpee, 1-2, 5—Opposed to Section 13, Mr. Gibbon, 10, 13-5—Application of, Mr. Appleton, 20-21—Opposed to repeal of Section 14, Mr. Harrison, 26-8—Practical value of, Mr. McKenzie, 31-6, Mr. Rose, 42-3—Opposed to elimination of, Mr. Beck, 37—Opposed to any change in, Mr. Sutherland, 45—Insertion of, in the Act, considered a protection, Mr. Haydon, 46—Amendment to Section 13, suggested, Mr. Haydon, 47—Author injured through licensee fixing the price at which a book will be published, Mr. Kelley, 57—Compulsory printing in Canada under licensing clauses, Mr. Robertson, 112—Licensing clauses *re* radio dealers and free music, Mr. de Montigny, 145—Radio license fees, Mr. de Montigny, 160, and Mr. Robertson, 200—Book licensing clause, Mr. de Montigny, 161—Opposed to, on ethical and economical grounds, Madge Macbeth, 182-184—Possibility of licensing clauses at times operating unfairly against Musson Book Company, Mr. Appleton, 191—How licensing clauses operate in respect to publishers, Mr. Appleton, 193-4—Compromise suggested *re* application of, to magazines, Hon. Justice Surveyer, 205—Licensing clauses fundamentally and morally wrong, Hon. Justice Surveyer, 206—Infringement of, upon the financial rights of authors, Mr. Kennedy, 240. *See* also telegrams urging repeal of, 251.

L'INSTITUT CANADIEN, CERCLE LITTÉRAIRE DE:—President's communication to Mr. Burpee, approving proposed amendments, 8.

MACLEAN PUBLISHING COMPANY:—*See* evidence of J. Vernon McKenzie, 31-36.

- MUSIC AND SONG, BROADCASTING OF:**—*See* evidence of Mr. Guthrie, 93-101; Mr. Combs, 79-93; Mr. Robertson, 106-8, 201; Mr. Cartier, 124-135; Hon. Mr. Constantineau, 139-141; Mr. de Montigny, 141-149, 154, 156-160; Mr. Gordon V. Thompson, 172; Mr. Burkan, 215-230; Mr. Rosenthal, 231-236.
- MUSIC AND SONG, PUBLISHERS OF:**—*See* evidence of Gordon V. Thompson, 167-182.
- MUSIC PUBLISHERS & DEALERS' ASSOCIATION, CANADIAN:**—*See* Memorandum, 245.
- MUSIC PUBLISHERS PROTECTIVE ASSOCIATION:**—*See* Telegram *re* radio performances, 142.
- MUSSON BOOK COMPANY:**—*See* evidence of F. F. Appleton, 18-23, 191-4. *See* also communications, 101-2.
- O'HALLORAN, GEORGE F.:**—Statement *re* Canadian citizenship, 16-7, 215. Suggests an opportunity be given to consider certain proposed amendments, 72—Statement *re* protection of authors in United States and Canada, by arrangement, 98—Statement *re* British Act and drafting of Bill in 1921, 110-1—How Canadian Copyright Act came into being, 113—Author or composer has under the law at present time absolute control of the performance of his work, 181—Registering of works, 190—Statement *re* amendment affecting radio broadcasting clause in Bill, 196. *See* also Memorandum *re* proposed amendment to Bill, 249-250.
- ONTARIO LIBRARY ASSOCIATION:**—Resolution endorsing the position taken by the Canadian Authors' Association to secure repeal of licensing clauses, 9.
- PERFORMING RIGHT SOCIETY OF LONDON, ENGLAND:**—*See* evidence of Henry T. Jamieson, 135-7. *See* also evidence of Mr. de Montigny, 145-6, 151; also Statement of Mr. Jamieson, 252.
- PRINTERS AND PRINTING:**—Subject of compulsory printing provisions in law, considered, Professor Leacock, 24-5—Situation of printers and authors, Professor Leacock, 25—The printing industry, Mr. Haydon, 47-48—Printing and importing of books, Mr. Robertson, 114—Not opposed to printers' interests, Madge Macbeth, 182-3—Whether printing of books is commercially possible, Mr. Appleton, 191—Importation of plates for printing, Mr. Appleton, 19-20; Mr. Haydon, 46-7—Hon. Justice Surveyer, 209. *See* also evidence of Mr. Harrison, 26-31; Mr. Rose, 41-5; Mr. Sutherland, 45-6; Mr. Haydon, 46-53; Alfred E. Thompson, 66-7; Gordon V. Thompson, 167-181, also letter of Russell, Lang & Co., Limited, 162.
- PUBLISHERS AND AUTHORS:**—Situation of, resulting from copyright legislation.—Mr. Burpee, 4-5; Mr. Gibbon, 10-11, 13-17; Mr. Appleton, 20-23; Professor Leacock, 24-5; Mr. Harrison, 27, 30; Mr. McKenzie, 31-36; Mr. Rose, 42-44; Mr. Haydon, 47; Mr. Kelley, 56-63, 65; Mr. de Montigny, 68-9; Mr. Combs, 81, 83, 88-9, 93; Hon. Justice Surveyer, 206-8, 211. *See* also evidence of Mr. Burkan, 215-219; Mr. Rosenthal, 232.
- PUBLISHERS' SECTION, TORONTO BOARD OF TRADE:**—*See* evidence of Mr. Appleton, 18-23, 191-194; Mr. Harrison, 26-31; Mr. McKenzie, 31-36; Mr. Rose, 41-45; Mr. Kelley, 53-66—Copy of Publishers' agreement read in the evidence, Mr. Appleton, 192; also the evidence of Mr. Haydon, 47-8.
- PUBLISHING COMPANIES:**—References to in the evidence given.—Boosey & Co., 232; Canadian Home Journal, 30; Carswell & Co., 112; Copp Clark Co., 15, 45, 55; Curtis Publishing Co., 188; Dent Co., 242; Dodd Meade Co., 34; Doran Co., 11; Doubleday, 184; Dutton, 242; Enoch & Co., 232; Francis, Day & Hunter Co., 167; Gage, 44-5; Grasset, 70; Horns Inc., 232; Hunter Rose, 42; Irving Berlin Inc., 232; Jerome H. Remick & Co., 232; Ladies Home Journal, 188; Leo Feist Inc., 167, 232; Labour Publishing Co., 162; Little Brown, 42-3, 184; MacLean's Magazine, 31, 35, 39, 190, 241-2; McClelland & Stewart Limited, 112; Marshall of London, 242; Methodist Book Room, 45; Morang & Co., 112; Munsey's Magazine, 188; Musson Book Co., 13, 19, 42, 44, 54-5, 242; Oxford Press, 54; Pictorial Review, 34; Publishers' Weekly, 14; Ricordi, 232; Ryerson Press, 42, 45, 54-6, 63, 119, 242; Small-Maynard, 184; Thomas Nelson, 44; Westminster Company Limited, 112; Whaley Royce, 177.
- RADIO BROADCASTING AND BROADCASTING STATIONS:**—*See* evidence of, —Mr. Combs, 79-93; Mr. Guthrie, 93-101; Mr. Robertson, 106-124, 197-202; Mr. Cartier, 124-135; Hon. A. Constantineau, 138-141; Mr. Hahn, 100-1; Mr. Jamieson, 136; Mr. de Montigny, 141-149, 151-159; Gordon V. Thompson, 171; Mr. Burkan, 215-230; Mr.

Rosenthal, 230-6; also evidence of Hon. Justice Surveyer, *re* principle involved in an author's property being used by a radio operator, 215; also reference to, in Memorandum, 245-9.

RADIO BROADCASTING SUPER-STATIONS IN UNITED STATES:—*See* evidence of Mr. Burkan, 226-7.

RADIO CORPORATION OF AMERICA:—*See* evidence of Hon. A. Constantineau, 133-141; also the evidence of Mr. Burkan, *re* radio industry in United States controlled by five companies, viz.: The Radio Corporation of America, Westinghouse Electric and Manufacturing, The General Electric, The Western Electric, and The American Telephone and Telegraph, 224-9.

RADIOTELEGRAPH ACT:—Amendment of, suggested *re* fees collected from broadcasting stations, etc., Mr. Robertson, 201.

RECORDS MANUFACTURERS:—*See* evidence of Mr. Berliner, 71-79; also Mr. Robertson, 106; Mr. Gordon V. Thompson, 163-170; Mr. Rosenthal, 235.

REGISTERING OF WORKS:—*See* evidence of Madge Macbeth, 189-190; also statement of Mr. O'Halloran, 190; and evidence of Mr. Appleton, 193.

REVUE DU DROIT, LA:—Opinion of an eminent member of the Montreal Bar *re* discrimination as between British-born, and Canadian-born authors, Hon. Justice Surveyer, 213-4.

ROYALTIES ON COPYRIGHTED WORKS:—References to, in the evidence of,—Mr. Gibbon, 10, 15-6; Mr. Haydon, 49, 51; Mr. Kelley, 58-9, 61; Mr. Berliner, 73-4; Mr. Combs, 85-6, 91-2; Mr. Guthrie, 99; Mr. Robertson, 121, 202; Mr. Jamieson, 135-6; Hon. A. Constantineau, 139-140; Mr. de Montigny, 146, 148, 155-160, Mr. G. V. Thompson, 168, 170-2, 174-181; Madge Macbeth, 185; Mr. Appleton, 192-3; Hon. Justice Surveyer, 205, 208; Mr. Burkan, 216; *See* also statement of Mr. Robertson, 83; Letters and Telegram, Mr. de Montigny, 146.

ROYAL SOCIETY OF CANADA:—President's communication to Mr. Burpee, approving proposed repeal of licensing clauses, 7.

RYERSON PRESS:—Telegram from, *re* protecting the licensing clause, 45. *See* also evidence of Mr. Robertson, 106; Letters in relation thereto, from T. G. Marquis, and Dr. Lorne Pierce, 239, and from Samuel W. Fallis, 255.

SERIAL PUBLICATIONS:—*See* evidence of Mr. McKenzie, 31-6; Madge Macbeth, 182, 188; Hon. Justice Surveyer, 205.

TORONTO TYPOTHETAE:—*See* evidence of Mr. Sutherland, 45-6.

TYPOGRAPHICAL UNION, INTERNATIONAL:—*See* evidence of Alfred E. Thompson, 66-7.

TYPOGRAPHICAL UNION, ONTARIO AND QUEBEC CONFERENCE:—*See* evidence of Mr. Haydon, 46-52.

VICTOR TALKING MACHINE COMPANY OF CANADA, LIMITED:—*See* evidence of Mr. Berliner, 71-79; also evidence of Mr. Rosenthal, 235.

WESTERN ELECTRIC CO.:—*See* Radio Corporation of America.

WESTINGHOUSE ELECTRIC & MANUFACTURING CO.:—*See* Radio Corporation of America.











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